144-260

RECORD, CASE No. 13,297.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 235.

HIRAM H. McLANE AND THOMAS RUCKMAN, APPELLANTS,

vs.

Z. KING AND JAMES A. KING, COMPOSING THE FIRM OF Z. KING & SON, AND THE HELENA BRIDGE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED OCTOBER 13, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 16, 1892.

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1 *Caption.*

In the circuit court of the United States for the western district of Texas, at San Antonio, the following proceedings were had in the case of H. H. McLane and Thomas Ruckman against Z. King and James A. King and The Helena Bridge Company.

2 At Rule, July 7th, Mon-ay, 1884.

3 *Petition for Appeal. Filed Oct. 27th, 1887.*

In the Honorable Circuit Court of the 5th Circuit and Western District of Texas, Sitting at San Antonio, Texas.

HIRAM H. MCLANE and THOMAS RUCKMAN
vs.
Z. KING and JAMES A. KING and THE HELENA BRIDGE COMPANY.
No. 19. In Chancery.

To the honorable Supreme Court of the United States of America:

Now doth appear the plaintiffs in the above suit, to wit, Hiram H. McLane and Thomas Ruckman, and most humbly prays the court to hear their petition as follows: That in the above cause, depending for hearing in the honorable United States circuit court for the 5th circuit and western district of Texas, on the 4th day of November, A. D. 1885, the hon. court made its final order and decree sustaining the demurrer of the defendants and dismissing plaintiffs' bill *and* complaint at their costs; and plaintiffs now complain that they are greatly wronged by said ruling, judgment, and decree of said court, and pray for an appeal to the Supreme Court, and that said aforesaid ruling, judgment, and decree of the said court be revised, set aside, and reversed in all things, as well as all other errors found in the proceedings in the court below, as in duty bound
4 they will ever pray, and that notice of appeal be given to defendants or attorneys of record, Mess. Green and Green, San Antonio, Texas.

HIRAM H. McLANE,
THOMAS RUCKMAN,
By attorney, A. J. EVANS.

Order Allowing Appeal. Filed October 27th, 1887.

IN CHAMBERS, *October 8th*, 1887.

The appeal prayed for in the above petition is allowed upon plaintiffs' filing with the clerk a good and sufficient bond in the sum of $1,000 for the payment of costs in supreme and circuit courts.

E. B. TURNER, *Judge.*

Endorsed: No. 19. Hiram H. McLane and Thomas Ruckman *vs.* Z. King and J. A. King and The Helena Bridge Company. Allowance of appeal. Filed October 27th, 1887. W. C. Robards, clerk.

Appeal Bond. Filed 27th October, 1887.

Appeal bond.

In the Honorable United States Circuit Court for the 5th Circuit and Western District of Texas, Sitting at San Antonio, Texas.

HIRAM H. MCLANE and THOMAS RUCKMAN
vs.
Z. KING and J. A. KING and THE HELENA BRIDGE COMPANY. } No. 19. In Chancery.

We, Hiram H. McLane and Thomas Ruckman, plaintiffs in
5 the above cause, as principals, and —— —— and —— ——, securities, are bound unto Z. King, J. A. King, and The Helena Bridge Company in the sum of one thousand dollars, conditioned:

Whereas the said plaintiffs in the above cause have prayed for and been allowed an appeal to the Supreme Court of the United States from the final judgment and decree in the said above cause, rendered in said circuit — on the 4th day of November, A. D. 1885: Now, if the said appellants shall well and truly prosecute the said appeal aforesaid and well and truly pay all the costs of said appeal on judgment against them on said appeal, then this undertaking — void; otherwise in force.

Witness our hands and seals.

HIRAM H. McLANE [L. S.]
THOMAS RUCKMAN. [L. S.]
GEO. W. BRACKENRIGE. [L. S.]
GEO. DULLNIG. [L. S.]

Approved and ordered filed.

E. B. TURNER, *Judge.*

Endorsed: No. 19. H. H. McLane and Thomas Ruckman *vs.* Z. King and J. A. King and The Helena Bridge Company. Appeal bond. Filed Oct. 27th, 1887. W. C. Robards, clerk.

Citation.

By the Honorable E. B. Turner, judge of the district court of the United States for the western district of Texas, at San Antonio, and sitting as one of the judges of the circuit court of said district.

6 To Z. King and James A. King, composing the firm of Z. King and Son, and The Helena Bridge Company, a corporation created by the State of Texas, and whose principal office is in the county of Karnes, State of Texas:

Whereas H. H. McLane and Thomas Ruckman has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the western dis-

trict of Texas, at San Antonio, made in favor of you, the said Z. King and James A. King, composing the firm of Z. King and Son, and the Helena Bridge Company, a corporation created by the State of Texas and having its principal place of business in Karnes county, Texas, and has filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday in October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of San Antonio, in the western district of Texas, at San Antonio, in the 5th circuit, the 19th day of December, in the year of our Lord one thousand eight hundred and eighty-seven.

E. B. TURNER,
U. S. Judge.

Attest with seal of said circuit court:
[L. S.] W. C. ROBARDS, *Clerk.*

7 *Return of Service of Citation.*

In U. S. Supreme Court.

H. H. McLANE *et als.*
vs.
Z. KING AND SON *et al.*

WESTERN DISTRICT OF TEXAS, *ss:*

Du Val West, being duly sworn, saith that on the 7th day of January, A. D. 1888, at San Antonio, Texas, he served on Jno. A. Green, the attorney of the above-named appellees, Z. King and Son, a copy of the appeal and a copy of the citation filed in this cause with the clerk of the circuit court in and for the western district of Texas, at San Antonio, Texas, by delivering said copy of the citation to the said John A. Green, the attorney, personally, of the said appellees, and by leaving said copy of appeal for said appellees in the clerk's office of the circuit court aforesaid.

DU VAL WEST.

Sworn to this 10th day of January, A. D. 1888.
W. C. ROBARDS,
U. S. Clerk.

Fees serving citation, $2.00.

Endorsed: No. 19. In United States Supreme Court. H. H. McLane *et als. vs.* Z. King & Son *et al.* Citation. Issued December 19th, 1887. W. C. Robards, clerk.

8 *Copy of Original Petition. Filed in Karnes County Sept. 12th, 1882.*

THE STATE OF TEXAS, }
County of Karnes. }

In the District Court, Fall Term, A. D. 1882.

To the Hon. H. Clay Pleasants, judge of said court:

The petition of Hiram H. McLane, a resident of Bexar county, in said State, and Thomas Ruckman, a resident of said Karnes county, complaining of Z. King (whose full name is unknown to us) and James A. King, composing the firm of Z. King & Son, residents of and doing business as manufacturers at the city of Cleveland, in the State of Ohio, and also complaining of the Helena Bridge Company, a corporate body created under the laws of Texas and whose principal office is at Helena, in said county of Karnes, and whose treasurer is John Ruckman, a resident of Karnes county, State of Texas, respectfully represents to your honor that your petitioners (herein styled plaintiffs) are the owners in fee simple of certain lands and premises hereinafter described and situated in said county of Karnes. Pl'ffs allege that in the year 1875 said Helena Bridge Company and Z. King and Son undertook and agreed to erect and complete and have ready for use by the 10th day of November, 1875 (afterwards changed to the 1st day of January, A. D. 1876), an iron bridge of the pattern made by said Z. King and Son across the San Antonio river near said town of Helena; and, further, that said bridge when completed should be kept in such good order as to be used for all purposes of travel on a public highway for twenty years.

9 Now plaintiffs represent that they, as owners in fee simple as aforesaid of the lands on both sides of said San Antonio river upon which said bridge was to rest, in consideration of the promises and undertakings of said defendants, granted to them for the term of twenty years the use and easement of said lands for the support of said bridge and the right of way for a road across their said lands to where the same should join said bridge; but this right and use was given upon the express consideration and condition of the undertakings and promises of the defendants herein as above set forth, and it was specifically understood and agreed that should said bridge not be so kept in good order, then the privileges of support and right of way should cease to enure to the said defendants and should revert, with all the benefits, privileges, and appurtenances of the same, to these plaintiffs.

Your petitioners allege that said defendants have wholly failed and refused to comply with their part of the contract and agreement in this, that, although a bridge was erected, the same failed to fulfill the contract of defendants as to time and manner of its erection, and as to the bridge so erected plaintiffs charge specially that they, the defendants, have wholly failed recently to keep said bridge in good order for travel as they agreed to do, so that for the last six (6) months the said bridge has been in bad order and repair and unfit for travel.

Wherefore plaintiffs charge that said lands and premises, together with all the rights, appurtenances, and fixtures attaching or belonging thereto, including said bridge, have reverted to them free
10 from the claim of said easement, to wit, the right of way and support heretofore named; and they claim that they are entitled to the immediate possession of the same as owners in fee simple, freed from the incumbrance of said use of right of way and support in said defendants or in any other person whomsoever.

And especially plaintiffs say they are entitled to the possession of said bridge, because under contract between said Z. King & Son and said Thomas Ruckman the possession of said bridge was given to said Ruckman, and he, at his own proper costs, to wit, —, to approach to said bridge; that he paid for the erection of said bridge; that he paid for the lumber and materials, as he agreed to do in said contract, and complied with the same in every essential particular; but said Z. King and Son failed so to comply on their part. Among other things, they agreed to have transferred to the said Thomas Ruckman ten thousand dollars of the paid-up stock in said Helena Bridge Company instead of to themselves, which they have wholly failed to do.

Plaintiffs further say that a part of all the right of said Thomas Ruckman in the subject-matter of this suit has been transferred to said McLane.

That said Ruckman was in the possession of said bridge; that he has not been lawfully deprived thereof, and that these plaintiffs are, therefore, entitled to the immediate possession of the same.

Plaintiffs further allege that as a part of the consideration for the agreement of the defendants to erect, complete, and keep in good order and repair for twenty years the said bridge, in addition to the said right of way and support, said Ruckman subscribed
11 and paid in two thousand dollars to the capital stock of said Helena Bridge Company and invested in the construction of the bridge some eight thousand dollars ($8,000.00) in all, and the said McLane subscribed and paid in one thousand dollars as capital stock in said bridge Co., and to procure these subscriptions and this investment the said Z. King and Son guaranteed the said contracts to build and keep in order said bridge, both on the part of said Helena Bridge Co. and themselves.

And, further, that they, the said Z. King and Son, agreed to have issued to the said McLane the sum of two thousand dollars of paid-up stock in the said Helena Bridge Co., and in default of such issue by the said Helena Bridge Co. direct to the said McLane, then that amount to be transferred to him by the said Z. King and Son out of their share of the paid-up stock of said bridge company as such share of said stock shall fall to them in accordance with the contract between them, the said Z. King and Son and the Helena Bridge Co., and which agreement has so far not been complied with either on the part of the Helena Bridge Co. or the said Z. King & Son.

These promises considered, plaintiffs pray that after hearing of this cause they have immediate possession of said land and premises; that they be declared to be the owners in fee simple of the

same, including said bridge and its approach, which latter was made and owned by said Thomas Ruckman as aforesaid and is now owned by plaintiffs, and that said land and premises be decreed to be freed from the incumbrance of said right of way and sup-
12 port; that plaintiffs be quieted in their title and possession of the same and have their writs of possession therefor.

Plaintiffs further pray that said Z. King and Son be required to have issued by the Helena Bridge Co. and transferred to them, the said plaintiffs, or to said Thomas Ruckman the said ten thousand dollars of paid-up stock in said Helena Bridge Company and to the said McLane the amount as agreed by them to be delivered to him as aforesaid, with costs and writs of execution; but in case this hon. court should *shall* decide that these plaintiffs are not entitled to said remedy and relief heretofore prayed for, then they pray judgment against said defendants for breach of contract on their part in the sum of twenty-one thousand dollars ($21,000.00).

Plaintiffs pray for all processes, for costs, and for general relief in law and equity.

HIRAM H. McLANE,
THOMAS RUCKMAN,
Plaintiffs.

Endorsed: No. 825. H. H. McLane *et al. vs.* Helena Bridge Co. *et al.* Copy of original petition. Filed 12th day of Sept., 1882. G. W. Brown, C. D. C., K. C.

Citation to John Ruckman.

Citation for John Ruckman.

The State of Texas to the sheriff or any constable of Karnes county, Greeting:

You are hereby commanded to summon John Ruckman
13 to be and appear before the honorable district court of Karnes county, Texas, at the next regular term thereof, to be holden at the court-house, in Helena, on the 5th Monday after the 1st Monday in Sept., A. D. 1882, then and there to answer the plaintiffs' petition filed in a suit in said court on the 12th day of Sept., A. D. 1882, wherein H. H. McLane and Thomas Ruckman are plaintiffs and Z. King, James A. King, and John Ruckman are defendants, file number of said suit being No. 825.

The nature of plaintiffs' demand is as follows, to wit: Suit to recover the Helena iron bridge across the San Antonio river and to gain possession of the land upon which the approaches of said bridge rests and to enforce a specific contract and for damages.

And you will deliver to said defendant a true copy of this citation.

Herein fail not, and have you then and there this writ, with your endorsement thereon showing how you have executed the same.

Witness G. W. Brown, clerk of the district court of Karnes county,

Texas. Given under my hand and the seal of said court, at office, in Helena, this the 13th day of Sept., A. D. 1882.

G. W. BROWN,
Clerk Dist. Court, Karnes County, Texas.

Sheriff's Return on Citation.

Came to hand this 13th day of Sept., A. D. 1882, at 10 o'clock a. m., and executed the same day by delivering to John Ruckman, the within-named defendant, in person a true copy of this writ.

J. M. RESINGER,
Sh'ff, Karnes Co., Texas,
By D. B. BUTLER, *Deputy.*

14 *Citation for Z. King.*

Citation to Z. King.

The State of Texas to any person competant to serve this citation outside of the State of Texas and make oath to the fact:

You are hereby commanded to summon Z. King, of the city of Cleveland, State of Ohio, to be and appear before the honorable district court of Karnes county, Texas, at the next regular term thereof, to be holden at the court-house, in Helena, on the 5th Monday after the 1st Monday in Sept., A. D. 1882, then and there to answer the plaintiffs' petition filed in a suit in said court on the 12th day of Sept., A. D. 1882, wherein H. H. McLane & Thomas Ruckman are plaintiffs and Z. King, James A. King, and John Ruckman are defendants, file number of said suit being No. 825. The nature of the plaintiffs' demand is as follows, to wit: Suit to recover the Helena iron bridge across the San Antonio river and to gain possession of the land upon which the approaches rests, and also to enforce a specific contract & for damages; and you will deliver to said defendant a true copy of this citation, together with a certified copy of plaintiffs' petition.

Herein fail not, and have you then and there this writ, with your endorsement thereon showing how you have executed the same.

Witness G. W. Brown, clerk of the district court of Karnes county, Texas.

Given under my hand and the seal of said court, at office, in Helena, this the 13th day of Sept., A. D. 1882.

G. W. BROWN,
Clerk District Court, Karnes County, Texas.

15 *Return on Citation to Z. King.*

Came to hand this the 18th day of Sept., A. D. 1882, at 10 o'clock a. m., and executed the 29th day of Sept., A. D. 1882, at the city of Cleveland, in the State of Ohio, by delivering to the within-named defendant, Z. King, in person a certified copy of plaintiffs' petition, and also a true copy of this citation.

JEELUTH FREEMAN,
Deputy Sheriff, Cuyahoga Co., Ohio.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

Personally appeared before me, Fallen C. Bangs, a notary public in and for said county, Jeeluth Freeman, deputy sheriff of said county, to me well known, who, being by me first duly sworn, says that the above and foregoing return of service of Z. King is true and correct.

To certify *to* which witness my hand and notarial seal of office, in the city of Cleveland and in said county and State, on this the 29th day of September, 1882.

FALLEN C. BANGS,
[SEAL.] *Notary Public.*

Endorsed: No. 825. District court, Karnes county, Texas, fall term, 1882. H. H. McLane *et al. vs.* Z. King & Son *et al.* Issued 13th Sept., 1882. G. W. Brown, clerk D. C. Filed 6th October, 1882. G. W. Brown, D. C., K. C.

Citation to James A. King.

The State of Texas to any person competant to serve this citation outside of the limits of the State of Texas and make oath of the fact, Greeting:

You are hereby commanded to summon James A. King, of the city of Cleveland and State of Ohio, to be and appear before the honorable district court of Karnes county, Texas, at the next
16 regular term thereof, to be holden at the court-house, in Helena, on the 5th Monday after the 1st Monday in Sept., 1882, then and there to answer the plaintiffs' petition filed in a suit in said court on the 12th day of September, 1882, wherein H. H. McLane and Thomas Ruckman are plaintiffs and Z. King and James A. King and John Ruckman are defendants, file number of said suit being No. 825. The nature of plaintiffs' demand is as follows, to wit: Suit to recover the Helena iron bridge across the San Antonio river and to gain possession of the land upon which the approaches of said bridge rests; also to enforce a specific contract and for damages.

And you will deliver to said defendant a true copy of this citation, together with a certified copy of plaintiffs' petition.

Herein fail not, and have you then and there this writ, with your endorsement thereon showing how you have executed the same.

Witness G. W. Brown, clerk of the district court of Karnes county, Texas.

Given under my hand and seal of said court, at office, in Helena, this the 13th day of September, A. D. 1882.

G. W. BROWN,
Clerk District Court, Karnes Co., Texas.

Sh'ff's Return on Citation to J. A. King.

Sheriff's return on citation.

Came to hand on the 18th day of Sept., A. D. 1882, at 10 o'clock a. m., and executed the 22d day of Sept., A. D. 1882, at the city of Cleveland, State of Ohio, by delivering to the within-named defendant, James A. King, in person a certified copy of pl'ffs' petition, and also a true copy of this writ.

JEELUTH FREEMAN,
Dep. Sh'ff, Cuyahoga Co., Ohio.

17 *Affadavit to Sh'ff's Return on Citation to J. A. King.*

Affadavit to sheriff's return.

THE STATE OF OHIO, }
County of Cuyahoga, } *ss:*

Personally appeared before me, Fallen C. Bangs, a notary public in and for said county, Juluth Freeman, deputy sheriff of said county, to me well know-, who, being by me first duly sworn, says the above and foregoing return of service of James A. King is true and correct.

To certify which witness my hand and notarial seal of office, in the city of Cleveland, in said county and State, on this 29th day September, 1882.

FALLEN C. BANGS,
Notary Public.

17½ Endorsed: No. 825. District court, Karnes county, Texas, fall term, 1882. H. H. McLane *et al. vs.* Z. King & Son *et al.* Citation. Issued 13th day of Sept., 1882. G. W. Brown, district clerk.

Answer of Defendants.

In District Court, Karnes County, Texas.

H. H. MCLANE and THOMAS RUCKMAN }
vs. } No. 825.
THE HELENA BRIDGE CO. *et al.* }

Now comes defendants Z. King and James A. King and, answering to plaintiffs' petition, says the same is insufficient to entitle plaintiffs — in this action; and of this *he* prays judgment of the court.

LAWHORN & BROWN,
Att'ys for Z. King & J. A. King.

And should the foregoing exceptions be by the court overruled, then for further plea and answer these defendants say that neither the plaintiff H. H. McLane or Thomas Ruckman have any interest whatever in the iron bridge described in their petition. Further,

defendants allege that they are the owners of said bridge and its franchises, ways, and privileges, for defendants allege that they purchased said bridge at a sale made by the United States — for the western district of Texas made at Helena, Karnes county, Texas, on the 6th day of June, A. D. 1882; that said sale was made by said marshal under and by virtue of an order — the circuit court of the United States for the western district of Texas issued upon a decree and judgment of said circuit court rendered at San Antonio on the 12th day of Oct., A. D. 1881, in suit therein pending, wherein Z. King & Son were plaintiffs and The Helena Bridge Company
18 were defendants, said judgment and decree being in favor of said plaintiffs.

And these defendants further allege that said United States circuit court for the western district of Texas was a court of competant jurisdiction to have and determin- said cause of Z King & Son *vs.* The Helena Bridge Company; that said judgment and decree of said court in said case was duly, legally, and regularly rendered; that said judgment and decree ordered said marshal to sell said iron bridge; that said marshal, after having given legal notice, did sell said bridge as above stated; that said sale was in strict conformity with law in every particular; that these defendants became the sole purchasers of said bridge, as before stated; that in pursuance of said sale said marsinal executed to these defendants a deed for said bridge, dated the 7th day of June, 1882; that said deed conveyed to these defendants all the title to said bridge, together with all the rights, members, hereditaments, franchises, ways, and appurtenances to the same belonging or in anywise incident thereto, and therefore these defendants allege that, if the plaintiffs ever had any interest in said bridge, the same was adjudicated by said United States circuit court in said *in said* cause as above stated, for these defendants allege that said plaintiffs, H. H. McLane and Thomas Ruckman, were parties defendants in said cause, and therefore these defendants say that the matters set up and complained of in plaintiffs' petition were settled in said suit, and therefore *said ris arjudicata*, and of this these defendants
19 pray judgment of the court; and for further plea and answer these defendants deny all and singular the allegations in plaintiffs' petition contained, and puts themselves upon the country. Wherefore these defendants pray that the plaintiffs take nothing by their suit and that these defendants be dismissed with their costs; they also pray for such general and special relief as they in law and equity are entitled to; and, as in duty bound, will ever pray, &c.

LAWHORN & BROWN,
Att'ys for Z. King and Son.

Filed 13th October, 1882.

G. W. BROWN, *D. C., K. C.*

Disclaimer of John Ruckman.

In District Court of Karnes County, Texas.

H. H. McLane and Thomas Ruckman }
vs.
The Helena Bridge Co. *et al.* }

Now comes John Ruckman, one of the defendants in the above-entitled cause, and says that he has no interest whatever in the subject-matter of litigation in this cause, and prays that he be dismissed with his costs; and, in duty bound, he will ever pray, &c.

LAWHORN & BROWN,
Att'y- for J. Ruckman.

Filed Oct. 13th, 1882.

GEO. W. BROWN,
C. D. C., K. C.

20 *Motion to Remove Cause to the U. S. Circuit Court.*

H. H. McLane *et al.* }
vs. } No. 825.
Helena Bridge Co. *et al.* }

To the hon. the judge of the district court in and for the 23d judicial district of Texas, sitting at Helena, in Karnes county:

Your petitioners, Z. King and James A. King, who are made defendants to this suit styled and numbered as above, allege that they are citizens of the State of Ohio, one of the United States of America, and were such citizens at the time of filing this suit styled as above, on the 12th day of Sept., 1882.

Your said petitioners further allege that this the October term of this court is the appearance term of this court for petitioners as defendants in said suit, and they pray this honorable court to enter an order herein transferring this cause to the circuit court of the United States, holding sessions at the city of San Antonio, in the county of Bexar and State of Texas.

In the original petition filed in the above-styled cause it is alleged and it is true that at the date of said filing said petition and now said pl'ff's, H. H. McLane and Thomas Ruckman, were and are citizens of the State of Texas.

These defendants to said cause here present their bond as the law requires for the removal of said cause to said United States circuit court.

21 These defendants to said cause further allege *allege* that, as will appear from the pleadings in this cause, more than five hundred dollars, exclusive of costs, are involved in this cause.

Your petitioners further allege that the pl'ffs, H. H. McLane and Thomas Ruckman, in their said original petitioner pretend to sue with these petitioners, The Helena Bridge Company, and represent

it as a body corporate created under the laws of the State of Texas and whose principal office is at Helena, in said Karnes county, and that John Ruckman, who resides at said Helena, is its treasurer, said plaintiffs well knowing that there is no such a company or body corporate in existance, nor was there at the time said original petition was filed.

Your petitioners allege that they are the only real defendants to said suit, and that there was no such a bridge company in existance at the date of filing of said original petition, to wit, on the 12th day of September, 1882, as the Helena Bridge Company.

LAWHORN & BROWN,
For Motion.

Endorsed: No. 825. H. H. McLane *et al. vs.* Helena Bridge Co. *et al.* Motion change cause to U. S. c't c't. Filed Oct. 1, 1882. G. W. Brown, D. C., K. C.

Plaintiffs' Exceptions to Removal.

THE STATE OF TEXAS, }
County of Karnes. }

In District Court, Octo. Term, 1882.

H. H. MCLANE *et al.*
vs.
HELENA BRIDGE COMPANY *et al.* } No. 825.

22 And now comes the plaintiffs in the above-styled cause and cepts to the motion herein filed by Z. King & Son to remove this cause to the circuit court of the United States—

1st. Because said motion is insufficient in law.

2d. Because said motion sets out no valid and sufficient reason for the removal of this cause.

3d. Because the removal of this cause is not authorized by law.

4th. Further excepts to the bond presented with said motion and herein filed, and says that the said bond is not in terms or condition as required by law to be executed by Z. King and Son.

5th. And the said plaintiffs specially excepts to that portion of said motion which seeks to enquire into the legal existance *or* a corporation of their codefendants, The Helena Bridge Company, and says that said enquiry is not relevant and cannot be legally enquired into in this proceeding.

6th. Because it appears from plaintiffs' petition that the Helena Bridge Company, alleged to be duly incorporated, *is* made def'ts, and further appears from the allegations in plaintiffs' petition that the said Z. King & Son have assumed obligations to said Helena Bridge Company as a corporation and have, jointly with said corporation, contracted with and assumed obligations to these said plaintiffs and cannot be heard to resist the enforcement of said obligations and contracts by the removal of this cause from this court having jurisdiction of their codefendant, as a corporation does not exist.

7th. And for answer herein these plaintiffs deny the alle-
23 gations set out in paragraph 4 of defendant King and Son's motion and say the same *is* not true.

And these plaintiffs herein specially aver and charge that the allegations in said petition as to the incorporation, domiciles, &c., of said Helena Bridge Co. are true; that the same is a corporation created under the laws of the State of Texas and now legally exist- and possesses the corporate rights and powers secured by the laws of the State of Texas governing private corporations.

That said corporation has never been dissolved by a failure to organize and commence its business within 3 years from the filing of its charter with the secretary of state or by the expiration of the time limited in its charter or by a judgment of dissolution rendered by a court of competent jurisdiction or other legal ground or proceedings, but is now in existance, with its every right, privilege, power, and obligation pertaining to it as a private corporation under the laws of this State.

STOCKDALE & PROCTOR &
S. F. GRIMES, *Att'ys for Pl'ffs.*

Filed 14 Oct., 1882.

G. W. BROWN,
D. C., K. C.

Bond for Removal.

THE STATE OF TEXAS, }
County of Karnes. }

Whereas Z. King and James A. King have this day filed their petition in the district court of Karnes county in a case therein pend-
ing, to wit, No. 825, styled H. H. McLane *et al. vs.* The Helena
24 Bridge Company *et al.*, praying said court to grant an order for the removal of said cause to the circuit court of the United States, holding *in* session at the city of San Antonio, in the county of Bexar and State of Texas: Now, therefore, in case said prayer shall be granted and said cause be removed, we, Z. King and James A. King, as principals, and S. A. Oliver and I. L. Elder, as sureties, do obligate and bind ourselves to pay to plaintiffs, H. H. McLane and Thomas Ruckman, the sum of five hundred dollars, but to be void on condition that Z. King and James A. King shall enter in said circuit court on the first day of its next session a copy of the said suit above named and shall pay all costs that may be awarded by said circuit court if said court shall hold that said suit has been wrongfully or improperly removed thereto, and that said Z. King and James A. King shall enter all special bail that may be required; otherwise this obligation shall remain in full force and effect.

Z. KING & SON,
By S. A. OLIVER, *Ag't.*
S. A. OLIVER.
I. L. ELDER.

Filed 13th October, 1882.

G. W. BROWN,
D. C., K. C.

Order of Court.

THE STATE OF TEXAS, }
County of Karnes. }

District Court. In Session October 17, 1882.

In District Court, Karnes County. October 17th, 1882.

H. H. MCLANE *et al.*
vs.
THE HELENA BRIDGE CO.

25 On this day came on to be heard plaintiffs' exceptions to defendants Z. King & Son'- motion to remove this cause to the U. S. circuit court of the western district of Texas, which, being heard and understood by the court, is overruled, except as to the exceptions to the sufficiency of defendants' bond filed herein, which is sustained.

Whereupon came on to be heard the said defendants' motion to remove this cause as above stated; which motion having been heard and considered by the court, said motion is denied; to which ruling of the court the defendant- Z. King & Son excepts.

Statement of Facts.

In District Court, Karnes County, October Term, 1882.

H. H. MCLANE *et al.*
vs.
THE HELENA BRIDGE CO. *et al.*

Be it remembered that, in support of defendants Z. King & Son'- motion to remove this cause to the U. S. district court, Thomas Ruckman testified that The Helena Bridge Company, defendants herein, had organized and elected a president, secretary, and board of directors in 1875, and that no election for officers for said bridge Co. had been held since. It is agreed that the above is a true statement of the material fact testified to in support of defendants Z. King & Son's motion herein.

STOCKDALE & PROCTOR &
S. F. GRIMES, *Pl'ffs' Att'y-.*
LAWHORN & BROWN,
Att'ys for Z. King & J. A. King.

26 The foregoing agreement, statement of fact, is approved.
Done in open court this 18th day of October, 1882.

H. CLAY PLEASANTS,
Judge for 23d Jud'l District.

Filed 18th October, 1882.

G. W. BROWN,
D. C., K. C.

Clerk's Certificate.

THE STATE OF TEXAS, }
County of Karnes. }

I, G. W. Brown, clerk of the district court in and for said county and State, hereby certify that the above and foregoing is a true and correct transcript of all the proceedings and orders had in cause No. 825, in the district court of said county, styled H. H. McLane *et al. vs.* The Helena Bridge Co. *et al.*, as appears from the papers on file in my office and from the minutes of said court at the October term thereof, 1882.

Witness my hand and official seal, at office in Helena, this the 3d day of March, 1883.

[SEAL.] G. W. BROWN,
D. C., K. Co.

Endorsed: No. 19. In chancery. H. H. McLane *et al. vs.* Z. King & Son. Record from Karnes Co. Filed March 6, 1883. W. C. Robards, clerk.

27 *Original Bill. Filed June 4th*, 1883.

Circuit Court United States, at San Antonio, Texas. In Chancery.

HIRAM H. MCLANE *et al.* }
vs. } No. 19. Original Bill.
Z. KING AND SON *et al.* }

To the judges of the circuit court for the western district of Texas:

And now comes the plaintiffs in above-entitled cause and in accordance with the order of this court and reform their pleadings and say the plaintiff H. H. McLane, who is a citizen of the State of Texas and who resides in the county of Bexar, and Thomas Ruckman, who is a citizen of the said State of Texas and who resides in the county of Karnes, complain of Z. King, whose name is otherwise unknown to plaintiffs, and James A. King, each of whom are citizens of the State of Ohio and resident in the city of Cleveland, and who compose the firm or partnership and doing business under the firm name and style of Z. King & Son, and of the Helena Bridge Company, a corporation created by the State of Texas, whose principal office is in the county of Karnes, in said State of Texas, and whose treasurer is one John Ruckman, and say—

That on, to wit, the 2d day of March, 1876, said Z. King and Son and the said McLane made and entered into a certain agreement, in writing, recorded in the final records of the said circuit court in case No. 135 on the docket of said court, entitled Z. King & Son *vs.* The Helena Bridge Company, on pages 21, 22, 23, 24, & 25, to which reference is here made for a full description of same, whereby, for and in consideration that the said H. H. McLane thereby
28 granted to the said Helena Bridge Company a right of support on land therein described for the certain bridge then in

process of erection and a right of way upon and over certain land therein described of the dimensions therein set forth for the term of twenty years and being of the reasonable value of one thousand dollars, and the further consideration of one thousand dollars in cash to the said King & Son in hand paid, the said Z. King & Son agreed to complete the said iron bridge then in process of erection across the San Antonio river, in the said county of Karnes, at the town of Helena, and keep the same in good order — as to be used for all purposes of travel on a public highway for the term of twenty years, and should cause to be issued and should transfer out of their own stock to the said McLane two thousand dollars in the stock of said bridge company, the parties to said agreement then and there mutually agreeing and contracting that if the said Z. King & Son should fail to complete said bridge by the first day of May, 1876, then the said King and Son should pay back to said McLane the said sum of one thousand dollars, with interest at the rate of two per cent. per month from the date of the payment thereof, being the date of said contract, and that all right of way and support thereby granted should revert to and revert in said McLane.

That, to wit, the 6th day of March, 1876, the said Z. King and Son and the said Thomas Ruckman made and entered into a *a* certain agreement, in writing, recorded in the final records of
29 this court in said case No. 135, on pages 26 & 27, and to which record reference is hereby made for a full description of said contract and agreement, whereby the said Thomas Ruckman agreed to pay for the said King & Son for all the lumber used in the erection and completion of said bridge, as well as the expenses of erecting said bridge of every kind whatsoever, being principally of labor and board of men erecting said bridge, and further to have issued to said McLane the amount of one thousand dollars in the paid-up stock of said Helena Bridge Company for the consideration therein named, and whereby, in consideration of the premises, the said Z. King & Son agreed and undertook to have transferred to the said Ruckman ten thousand dollars of paid-up stock in the said Helena Bridge Company.

Plaintiffs aver that the said McLane did in fact deliver to the said King & Son the possession of the said right of way and bridge supports in pursuance of the above-recited obligation of him, said McLane, and that he did in fact, on, to wit, the said 2d day of March, 1876, pay over to the said Z. King & Son the said sum of one thousand dollars in cash; that the said Thomas Ruckman, in pursuance of his said obligation hereinbefore recited, did in fact, from, to wit, the 17th day of November, 1875, to the 30th day of July, 1876, pay for the said lumber material of said bridge, said labor and expenses of board of men, &c., divers sums of money, amounting to the sum of six thousand four hundred and fifty-eight $\frac{95}{100}$ dollars, after deducting all just credits paid to the several persons in the several sums and for the several items as shown by the paper hereto
30 annexed, marked Exhibit "A," and made a part of this petition, and otherwise fully complied with the obligations upon him imposed by his said contract as aforesaid.

And plaintiffs charge that the said Z. King & Son have not complied with their obligations in the premises for this, that the said bridge was not completed at the said 1st day of May, 1876, nor has it ever been fully completed by the said Z. King and Son; that it has not been kept and maintained by them in good order and repair so as to be used for public travel and traffic, and that it is now in a ruinous and dangerous condition; that the said Z. King and Son have not, though often thereto requested, paid back to said McLane the said sum of one thousand dollars and interest; that they have not transferred or caused to be issued to said McLane the said two thousand dollars of paid-up stock in said Helena Bridge Company; that they, said Z. King and Son, have not transferred or caused to be issued to said Thomas Ruckman the said ten thousand dollars of stock in said Helena Bridge Company, though often requested thereto, nor have they paid back to said Ruckman the said sum of $6,458.98 *thousand dollars* by him in this behalf expended as aforesaid.

But these plaintiffs say that the said Z. King and Son, on, to wit, the 24th day of July, 1880, caused to be filed in this circuit court their petition and suit in the said case No. 135 on the docket of this court, alleging ownership in them of certain promissory notes charged to have been executed by said bridge company or by its authority the 6th day of March, 1876, and secured by mortgage on the said
31 bridge and its appurtenances; that on, to wit, the — day of October, 1881, in the said last-mentioned cause, the said Z. King & Son procured to be rendered and entered therein a judgment upon said notes for the sum of ten thousand nine hundred and nineteen dollars and a decree foreclosing said lien; that on, to wit, the 24th day of April, 1882, the proper process having been issued upon said judgment and decree, the said Z. King and Son caused to be sold at public vendue the said bridge and its said appurtenances, and then and there bought in the same for the sum of two thousand dollars, and are now in possession of the same, claiming, using, and enjoying the same as their sole and separate property, excluding these plaintiffs from the use, possession, and enjoyment of the same, and are now receiving the rents, tolls, and profits arising from said bridge and its appurtenances, the exact amount of which plaintiffs cannot state, but of which they pray an account may hereafter be taken.

Plaintiffs say that the Helena Bridge Company has never owned and does not now own any property save and except the said bridge and its said appurtenances, and the said bridge company is insolvent; that the said bridge and its said appurtenances are worth about the sum of twenty thousand dollars; that by reason of the claim of said Z. King and Son in the premises as hereinbefore set forth the said paid-up stock, if now issued, would be worthless in the hands of these plaintiffs, and unless these plaintiffs be admitted into participation with the said Z. King and Son in the said bridge and its appurtenances, together with all the revenues, tolls,
32 profits, &c., from the same arising or that may have heretofore therefrom arisen in such proportions and upon such terms as may be just and equitable, these plaintiffs will have lost

without recourse the large sum of money paid out by them as aforesaid and from which they have derived no advantage nor taken any benefits whatever.

And so they pray that they may have their decree, as against said Z. King and Son and the said Helena Bridge Company, sett-ing and determining their interest in the said bridge and its said appurtenances, with the value of the property as a basis, and the amounts in cash and cash values paid as aforesaid to fix the several interest of the parties therein, and that these plaintiffs be admitted by the decree of the court to a full and complete participation in and enjoyment of the rents, revenues, tolls, and profits of every kind arising out of or derived from the said bridge and its said appurtenances, or, failing in this, plaintiffs pray that the said property be sold under order of this court, and that the proceeds arising from said sale be divided ratably between these plaintiffs and the said Z. King and Son in accordance with their respective interests, as hereinbefore indicated, or, failing in this, plaintiffs pray that said Z. King & Son be required to pay back to said Ruckman the said sum of $6,458.98 *thousand dollars* by him as aforesaid paid out, together with legal interest from the date of said payments, or the said contract between him and the said Z. King & Son be enforced according to the spirit thereof and the true intent of the parties thereto, and that the said Z. King and Son be required to pay back to the said H. H. McLane
33 the said sum of one thousand dollars by him to them paid as aforesaid, together with interest as called for by his said contract; that the said grant of said right of way and said bridge support be cancelled and annulled, and said Z. King and Son and said Helena Bridge Company and all other persons claiming under said grant thereof be perpetually enjoined from entering or remaining upon said land embracing said bridge supports and said right of way.

And should the first or second or both the first and second prayer be granted plaintiffs further pray that an account be taken under the direction of this court by and from the said Z. King and Son of all profits, tolls, receipts by them had or received of or on account of said bridge and its said appurtenances, and that in apportioning the several interests of the parties to this suit in the subject-matter thereof that said Z. King and Son be duly debited therewith, and these plaintiffs pray for general relief.

DIGGES AND AUBREY,
Solicitors for Complainants.

Affidavit of Plaintiffs to their Bill.

UNITED STATES OF AMERICA, *ss:*

Personally appeared before me, the undersigned authority, this 30th day of May, A. D. 1883, H. H. McLane and Thomas Ruckman, who, being, each of them, by me duly sworn, did severally depose and say that they are the complainants in the foregoing bill named and have read the same and know the contents thereof; that the

said bill is true of their own knowledge except as to those
34 matters which are therein stated as their information and belief, and as to those they believe them to be true.

HIRAM H. McLANE.
THOS. RUCKMAN.

Sworn before me on the date first hereinbefore recited.

W. C. ROBARDS, *Clerk.*

Endorsed: No. 19. H. H. McLane *et al. vs.* Z. King & Son *et al.* In chancery. Original bill. Filed June 4, 1883. W. C. Robards, cl'k. Digges and Aubrey, solicitors for complainants.

Contract Referred to on Page 27.

THE STATE OF TEXAS, }
County of Bexar. }

This agreement, made and entered into this second day of March, A. D. 1876, by and between Hiram H. McLane, of the county of Bexar and State of Texas, and by Z. King and Son, of the city of Cleveland and State of Ohio, the said McLane acting for himself, and *and* S. A. Oliver, the general agent for Z. King & Son for the State of Texas, and James A. King, one of the firm of Z. King and Son, acting jointly, having full and complete authority to do so for Z. King and Son, witnesseth: That whereas the said firm of Z. King & Son having contracted by and through their agent, S. A. Oliver, as aforesaid, with Thomas Ruckman and others, of the county of Karnes and State of Texas, a chartered corporation under the title and by the name of the Helena Bridge Company, to construct for
35 said *for said* bridge company one of Z. King's improved iron patent bridges across the San Antonio river at or near Helena, in said county of Karnes; and whereas the said bridge so to be constructed is being placed by said Z. King and Son across said stream so that one end shall rest upon the land belonging to the said McLane, thereby necessitating the use of a portion of said land to support said end of said bridge, as well as the right of way across said land for purposes of travel to and from said bridge, the same being a toll bridge; and whereas the said McLane subscribed stock to the amount of two thousand dollars to aid in said enterprize, conditioned, however, that the privileges and uses of said land for support of said bridge and the right of way as aforesaid shall be paid for out of said stock so subscribed as aforesaid; and whereas said bridge being now in process of construction by the said Z. King and Son and the time being near at hand when such privilege of support and right of way shall be needed: Now, therefore, it is agreed by and between the contracting parties as hereinbefore mentioned that the said Helena Bridge Company shall have the right of such support for said bridge and the right of way across said lands, the said right of way to be for a width of sixty feet, beginning at the end of said bridge where it shall rest upon the lands of said McLane and extending in a southerly direction, or at such variation therefrom as

shall be agreed upon by said McLane and the said Bridge Company,
to the intersection of the eastern line of the Peter S. Elliot
36 survey of land, the same being the west line of Andres Soto
survey, and thence along said eastern line, with a width of thirty feet, to the southern terminus of the same, the said privileges of support and right of way to continue for the term of twenty years according to the terms of the charter of said Helena Bridge Company, provided said bridge now in process of construction shall be completed and shall be kept in such good order as to be used for all purposes of travel on a public highway and such right of way as aforesaid shall be a public highway and to be used as such during the continuance of said chartered rights, provided said bridge shall be so kept in good order; but should said bridge not be kept in good order, then the privilege of support and right of way shall *shall* cease to inure to the Helena Bridge Company and shall revert, with all the benefits of the same, to the said Hiram H. McLane, his heirs or assigns.

And whereas the said Hiram H. McLane has this day paid to the said S. A. Oliver and James A. King, partners as aforesaid, on account of and for the use and benefit of Z. King and Son the sum of one thousand dollars, and has executed this instrument granting the rights herein specified to the Helena Bridge Company in compensation for and payment of the amount of two thousand dollars of stock subscribed as aforesaid: Now, therefore, the said Z. King & Son, by and through the said S. A. Oliver and James A. King, the partners aforesaid, they being duly authorized to so contract, agree
that said payment of one thousand dollars and the execution
37 of this instrument, with the grants herein made to the Helena
Bridge Company, shall be in full of said subscription of two thousand dollars as aforesaid, and that the paid-up stock in such said bridge company shall be issued therefor to that amount, being twenty shares of one hundred dollars each, and that if such issues of stock be not made directly by said company in consideration therefor, then and in that case the said Z. King and Son shall cause to be transferred that amount of stock out of their share of the paid-up stock of said bridge company as such share of said stock shall fall to them in accordance with the contract entered into between the said Z. King and Son and the Helena Bridge Company, such transfer to be made upon the completion of the said bridge as aforesaid.

And it is further agreed that if the said Z. King and Son shall fail to complete said bridge now in process of construction as aforesaid by the first day of May next, then the said firm of Z. King and Son shall refund to the said Hiram H. McLane the said amount of one thousand dollars so paid as aforesaid, with interest at the rate of two per cent. a month from the time of such payment, and the privileges herein stipulated to be granted to the said Helena Bridge Company shall revert to the said McLane.

And it is further agreed and expressly stipulated herein that the said Helena Bridge Company shall have no right to use the said strips of sixty and thirty feet as aforesaid, and shall not use

them or any portion thereof for other purpose or purposes
38 than that of a public highway for the use of those who may desire to go to and from said bridge as aforesaid, and the same shall be governed by and be subject to all the rules and regulations prescribed in the statutes and laws of the State of Texas governing public highways and applicable thereto, except in so far as to be the reserved rights of said McLane as herein stipulated and set forth.

And it is further agreed by the contracting parties herein that the said McLane shall not be required to fence off said strips of sixty and thirty feet as aforesaid unless he shall elect so to do, and, further, that he shall not be required to remove or change any portion of the fencing now on said eastern line of said Peter S. Elliott survey if sufficient room otherwise be given for the passage of vehicles and of foot and horse men; and it is further agreed that he shall have the right to place a gate at the southern terminus of said strip of thirty feet, being the southern corner of the Peter S. Elliott survey, so to be used for purposes of a public highway as aforesaid, and also to such other point or points along said strips, closing the same up thereby with such said gate or gates, as he may decide upon, said gates to be used for purposes of ingress or egress by those having occasion to use the said highway as aforesaid.

And it is further agreed by the contracting parties herein that, in
39 case the said McLane shall not erect fencing along the right of way herein granted, the said Helena Bridge Company shall not be responsible for any damage done the said McLane by reason of said fencing not being built or gates being left open.

And it is further agreed that if the said Z. King and Son shall decide not to complete said bridge they shall have the right to return the said McLane the one thousand dollars paid them by him as hereinbefore mentioned, if they shall so elect, within ten days from the date hereof, without interest.

In testimony whereof we, the contracting parties herein, have subscribed our names, in the city of San Antonio, the day and date above written.

(Signed in duplicate)

HIRAM H. McLANE.
Z. KING & SON,
Per JAMES A. KING AND
S. A. OLIVER.

Endorsed: U. S. C. c't. Ch'y. No. 3. Z. King & Son *vs.* Helena Bridge Co. and S. A. Oliver. Exhibit "B" to answer B. Filed Oct. 4th, 1880. W. C. Robards, clerk.

40 *Contract Referred to on Pag-* 27.

This agreement, made and entered into this 6th day of March, A. D. 1876, by and between Z. King and Son, of Cleveland, Ohio, of the first part, and Thomas Ruckman, of Helena, Texas, of the second part, witnesseth:

That whereas the said Z. King and Son are now erecting an iron bridge of their manufacture for a corporation known as the Helena Bridge Company across the San Antonio river at Helena, Texas; and whereas the said bridge is nearly completed, and on the completion of the same there is to be paid to the said Z. King and Son ten thousand dollars in the paid-up stock of the Helena Bridge Company: It is agreed by the said Thomas Ruckman that he will pay *for* the said Z. King and Son — all the lumber used in the erection and completion of said bridge, which lumber was principally purchased from Huck & Co., of Cuero, Texas. The said Ruckman also agrees to pay all the expenses of erecting said bridge of every kind whatsoever, being principally of labor and board of men erecting said bridge. The said Ruckman further agrees to have issued to one H. H. McLane, of San Antonio, Texas, the amount of one thousand dollars of the paid-up stock in the said Helena Bridge Company for and in consideration that the said Hiram H. McLane shall give the Helena Bridge Company a right of way through the lands of said McLane abutting to the end of said bridge; a true copy of which agreement is annexed to this
41 and marked Schedule "A." For and in consideration of the faithful performances by the said Thomas Ruckman of all and each of these several matters the said Z. King and Son agree to have transferred to said Thomas Ruckman the said ten thousand dollars of paid-up stock of the Helena Bridge Company instead of to themselves; provided, further, the said Ruckman shall pay to L. S. Lawhorn and John Geory two hundred dollars in paid-up stock of the Helena Bridge Company, divided equally among them.

In witness whereof we have set our hands and seals this day herein mentioned.

Z. KING & SON. [SEAL.]
THOMAS RUCKMAN. [SEAL.]

Endorsed: Exhibit C. Filed Aug. 10, 1881. W. C. Robards, clerk.

42 EXHIBIT "A." Referred to on page 29.

Mess. Z. King & Son in ℅ with Thomas Ruckman.

1875.			
Nov.	17.	To nails, 12 lbs.	$1 00
	18.	" tobacco, per order	50
	23.	" bucket, .75; cup, .10; pick handle, .20	1 25
		" 1 qr. foolscap paper	35
	26.	" tobacco	50
Dec.	7.	" do. to G. W. Prentis	50
	24.	" do. to James Gill	1 00
	29.	" do. to Frank Newland	1 00
		" files, .60; padlock, .40	1 00
	31.	" memorandum book, .50; musilage, .25	75
1876.			
Jan'y	3.	" wheelbarrow	6 00
	5.	" coal & nails (bill H. Runge & Co.)	12 90
	7.	" bolts	1 00
	8.	" tobacco to Neilson, $1.00; to Winchester, $1.00	2 00
		" bolts, $2.50; nails, .40	2 90
	11.	" barrel flour	10 00

1876.			
Jan'y	12.	To tobacco to Cordin, 1.00; rope, $3.10; nails, .50	$4 60
	13.	" tobacco to Gill, $1.00; bucket, .25; bolts, .60	1 85
	14.	" 11 lbs. rope @ .20	2 20
	15.	" molasses, 50c.; coffee, $2.00; meal, .90—to Mrs. Butler	3 40
	17.	" paper, .35; rice, .50—to Mrs. Butler	.85
	18.	" paints, 4.50; broom, .50	5 00
	"	" sugar, 1.00; syrup, 1.00; matches, .80—to Mrs. Butler	2 80
	19.	" tobacco to Gill, $1.00; do. to Winchester, $1.00	2 00
	"	1 bushel meal, .90, to Mrs. Butler	90
	30.	" sweet potatoes to Mrs. Butler	50
	"	" auger, $2.00; pencils, .15	2 15
	21.	" boots, $3.50; socks, .25; knife, .25—to Neilson	4 00
			$72 90

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1876.		Amount bro't over	$72 90
Jan'y	21.	To package envelopes, .25; 1 p'r boots, 4.50; nails, 4	5 25
	"	sugar to Mrs. Butler	1 00
	23.	" meal, .60; molasses, 1.00; sugar, .50—to Mrs. Butler	2 40
	24.	" amount paid John Archer	27 00
	"	tobacco, 1.00; boots, 3.50—to Cordin	4 50
	25.	" taper files	60
	"	tobacco, .25; fish lines & hooks, 1.30—to Neilson	1 35
	"	powder & shot to ditto	50
Feb'y	1.	" powder, .50; shot, .35; caps, .25; tobacco, .50; matches, .05—to Winchester	1 65
	"	powder & caps to Conway	50
	"	tobacco, 2 ; cash, 1.50; shot, .15; powder, .25—to Klein	2 10
	2.	" alpaca to Neilon	1 00
	"	tobacco to ditto	50
	4.	" ditto to Winchester	1 00
	5.	" paper to Neilson	25
	7.	" slippers to ditto	1 00
	"	do., $1.00, & socks, .80, to Winchester	1 80
	"	tobacco to Conway	1 00
	15.	" ditto " ditto	1 00
	"	ditto " ditto to Winchester	1 00
	"	ditto " to Gill	1 00
	"	goods to Mrs. Butler, per order	10 00
	16.	" tobacco to Kennan	65
	"	cash paid John Archer, per order	4 50
	"	pants to Conway, 3.50; pepper to Kennan, .40	3 90
	17.	" order to Porter, 4.30; paper, .25	4 55
	"	tobacco to Neilson	1 00
	21.	" paper & envelopes, .50; tobacco & matches to Neilson, .70	1 20
	"	tobacco & matches to Baker	1 00
		Forward	156 20

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1876.		Amount bro't over	$156 20
Feb'y	25.	To hatchet, 1.75; oil can, .25	2 00
	28.	" goods to Porter, per order	4 55
	29.	" tobacco to Winchester	1 00
March	1.	" do. " Neilson	1 00
	"	do. " Gill	1 00
	"	nails	20
	3.	" tobacco and matches to Kennan	25

1876.				
March	4.	To tobacco to Conway		$1 00
		" cash paid order to Baker		6 00
		" spectacles to Evans		50
		" cigars to Kennan		25
		" tobacco to Winchester		50
		Coin		174 45
		Add premium on $174.45 @ 1.10		17 45
		U. S. currency		192 90
1875.				
Dec.	7.	To cash		250 00
	29.	" do.		150 00
1876.				
March	6.	" cash paid J. H. King, bal. R. R. freight		13 75
		" " " " freight on iron from Kingsbury to Helena, as — W | 2, 89,812 lbs., @ 1.25 per 100 lbs., ½ coin, 378.87, @ .90; currency, 791.27; $460		1,251 27
	7.	" cash paid S. W. Osborn		25 00
	16.	" files, .50; rope, .45 (coin, .95), @ .95		1 05
	25.	" cash paid Osborne		50 00
	27.	" files, .50; nails, .4 |; oil, .2 | coin	1 25	
		" linseed oil, 7.50; iron bolts, 1.50 "	9 00	
Ap'l	3.	" linseed oil, 7.50; bitts & files, .95; hauling, 3.20 coin	11 65	
	13.	linseed oil, $5.00; nails, 3.00; cash, 1.60; oil, 6.25 coin	15 85	
	17.	sweet oil, 2 |; coal oil, 1.75 "	2 00	
		cash paid D. B. Stelsterver % "	14 60	
			54 35	
		Add premium @ .90		60 39
		Over		$1,984 81
45				
1876.		Amount bro't over		1,984 81
Ap'l	17.	To cash paid Osborne, 5.00; Eckland's % bill, 12.99		17 99
		" cash W. H. Mayfield's %		15 90
		" " paid % John Ruckman		55 47
		" " " J. Porterfened for labor		20 17
		" am't store % J. W. Osborne		8 40
		" " J. W. Osborn order to Newland		53 00
	24.	" " " %		64 47
		" " paid L. J. Harman for hauling		138 75
		" " " freight on tools from Longview		14 15
		" " " freight on lumber from Cuero from Oct. 25 to date, as per W. K., 45012 feet, in coin 933.31, @ 90		1,027 33
		" cash paid %, per memorandum S. W. Osborn		342 95
		" cash paid hands for labor on bridge construction, as per memo. of S. W. Osburn		2,101 48
		" cash paid L. Stortz, blacksmith bill		32 25
		" " " Porterfend for labor		8 85
May	1.	" " " H. J. Huck, % for lumber		1,330 95
		" " " " " "		560 95
		" " " freight on lumber M'ch 6		152 29
		" " " Jno. Ruckman %		18 34
				7,948 48
		Received from L. J. Elder	$1,000 00	
		" L. W. Burris	500 00	
		" L. G. Stammon	100 00	
		" J. C. McAden	100 00	
		" Jas. M. Calumet	100 00	
		" C. Campbell	100 00	
			1,900 00	

Account of bridge approach:

1876.				
June	9.	Nails, .75; bolts, 2.50; nails, .60	$3 85	
	13.	Cash paid Lewis Safford for cutting sills	12 00	
		Taps, 1.85; nails, 10.50	12 35	
		2 doz. large bolts @ 4 ⅛ each	12 00	
	28.	46 lb bolt iron @ 8¼	3 90	
46		Bro't forward		
	30.	Nails	1 25	
July	1.	Ditto	2 25	
	11.	4 doz. 7-in. bolts	4 80	
		Nails, 2.25; wire, 7.00	9 25	
		Cash, $1.00; bucket & dipper, 1.10	2 10	
	14.	Cash paid for iron	2 25	
		" " for hauling sills (live-oak)	48 80	
		" " W. H. Mayfield for 18,629 ft. lumber @ 5c.	558 87	
		" for hauling above lumber	98 15	
		Nails	2 00	
July	30.	1 keg spikes	7 00	
		Cash paid John Self (carpenter)	300 00	
		" paid for 100 8-in. bolts for bannisters	7 50	
		Amount in coin	$1,088 32	
		Add premium	120 95	
				1,209 25
				8,157 73
		Amount credits brought down		1,900 00
				6,257 73

Account for toll-house:

Cash paid for lumber, blocks, & work	80 00	
" " " carpenter	25 00	
Hinges, bolts, screws, locks, & nails	16 25	
Paid for lumber & building of shed-room	55 00	
		201 25
		$6,458 98

47 *Demurrer of Z. King & Son to Complainants' Original Bill. Filed Aug. 6th, 1883.*

Demurrer of Z. King & James A. King.

In the United States Circuit Court for the Western District of Texas, at San Antonio.

HIRAM H. MCLANE and THOMAS RUCKMAN
versus
Z. KING & JAMES A. KING and THE HELENA BRIDGE COMPANY. } In Chancery.

The demurrer of Z. King and James A. King to the bill of complaint of Hiram H. McLane and Thomas Ruckman, the above-named plaintiffs.

These defendants, by protestation, not confessing all or any of the matters and things in the plaintiffs' bill of complaint contained to be true in such manner and form as the same *is* therein set forth and alleged, do*th* demur to the said bill, and for cause of demurrer show*eth:*

First. That the said complainants in and by their said bill have not made or stated such a case as entitle- them in a court of equity to any discovery as against these defendants or any relief against them as to the matters contained in the said bill or any of such matters.

Second. It appears by the said bill that the same is exhibited by the said Hiram H. McLane and Thomas Ruckman against these defendants and the Helena Bridge Company upon seperate and distinct contracts, in which the said complainants have no common interest with each other; that the said Hiram H. McLane
48 brings his said bill against these defendants upon a seperate and distinct contract entered into between the said McLane and these defendants, Z. King and James A. King, dated of the second of March, 1876, and the said Thomas Ruckman in the same bill brings his action against these defendants, Z. King and James A. King, upon a seperate contract made with him by these defendants, dated March 6th, 1876, the subject-matter of which said contracts as well as the parties thereto being distinct and seperate and which cannot be heard in the same bill.

Third. The said complainants by their said bill have joined these defendants with the Helena Bridge Company as a codefendant in this suit and do not show any interest — the said Helena Bridge Company in this suit and do not pray any relief against said Helena Bridge Company.

Fourth. The said complainants in their said bill — that if they have any right to relief as against these defendants in respect to the matters alleged or stated therein the said retief is in the nature of damages which can be assessed by a court of law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the *the* defendants do demur thereto and humbly demand the judgment of this court whether they shall be
49 compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JNO. A. & N. O. GREEN,
Solicitors for Defendants, San Antonio, Texas.

We certify that in our opinion this demurrer to the bill of the complainants, Hiram H. McLane and Thomas Ruckman, is well founded in point of law.

JNO. A. & N. O. GREEN,
Solicitors for Defendants, Z. King and James A. King.

THE UNITED STATES OF AMERICA, }
North. District of Ohio. }

THE STATE OF OHIO, }
County of Cuyahoga. }

Before the undersigned, Charles H. Bill, a commissioner of the circuit court of the United States for the northern district of Ohio, personally came Zenas King and James A. King, defendants to the

bill of complaint of Hiram H. McLane and Thomas Ruckman against Z. King and James A. King and the Helena Bridge Company, above named, and, being duly sworn, on oath saith that this demurrer to said bill is not interposed for delay.

Z. KING.
JAS. A. KING.

Subscribed by the said James A. King and Zenas King in my presence and sworn to before me this 23 day of July, A. D. 1883.

CHAS. H. BILL,
U. S. Commissioner, N. D. O.

50 UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, }

I, A. J. Ricks, clerk of the circuit court of the United States for the northern district of Ohio, sixth circuit, do hereby certify that I am well acquainted with the handwriting of Charles H. Bill, whose name is subscribed to the annexed affidavit, and that the signature to the same is in his proper handwriting.

And I do further certify that he was at the time of signing the same a commissioner of the circuit court of the United States of America for the northern district of Ohio.

In testimony whereof I hereto subscribe my name and affix the seal of said circuit court, at Cleveland, Ohio, this 23d day of July, in the year of our Lord one thousand eight hundred and eighty-three, of the Independence of the United States the 108th.

A. J. RICKS, *Clerk*,
[SEAL.] By O. C. BEATTY,
Deputy Clerk.

Endorsed: In ch'y. No. 19. H. H. McLane and Thomas Ruckman *vs.* Z. King and James A. King and The Helena Bridge Co. Demurrer of the defendants, Z. King & James A. King. Filed Aug. 6, 1883. W. C. Robartds, cl'k.

51 *Complainants' Amended Bill. Filed Jan'y 4th*, 1884.

Complainants' amended bill.

Circuit Court United States, at San Antonio, Texas.

HIRAM H. MCLANE *et al.* *vs.* Z. KING *et als.* } No. 19. In Chancery.

To the honorable the judges of said circuit court:

The amended bill of said complainants show to your honors, in addition to and in amplification of the recitation in complainant-' original bill, all of which are hereby specially reiterated and reaffirmed, that by an instrument in writing, dated and executed the 19th day of January, A. D. 1882, the said complainant, Thomas

Ruckman, assigned and transferred to the said complainant, H. H. McLane, for a valuable consideration, an interest amounting to three-fourths, undivided, in and to the certain bridge structure, franchises, and approaches to the same described and specified in the original bill of said complainants, together with all the interest which should thereafter accrue in connection with or attaching to or belonging to said bridge, approach, franchises, unto said Thomas Ruckman, and including all rights of action growing out of said contract with Z. King and son, James A. King, made and entered into with them by said Thomas Ruckman, as set forth in said complainants' original bill, the said three-fourths so conveyed, assigned, and transferred being three-fourths of all the interest then owned by the said Thomas Ruckman in said bridge, franchise, approaches to the said bridge, and all interest, rights of action of any kind or character then owned or claimed by said Ruckman in said
52 bridge, franchises, approaches, or incident to or arising out of said contract between said Z. King & Son and the said complainant, Thomas Ruckman, or which should thereafter accrue to him under and by virtue thereof.

And said complainants here aver that at the time of the institution of this suit and ever since that time said complainants, Thomas Ruckman and said H. H. McLane, were and are joint owners of all the rights, title, and interests of the said Thomas Ruckman owned by said Ruckman on the said 19th day of January, 1882, or since that time by him acquired in and to the said bridge property and of all rights of action and interest owned by the said Ruckman under said contract between him and the said Z. King and Son or since that time by him acquired or to him accrued.

And complainants aver that in order to avoid a multiplicity of suits, because their interests are identical, the equitable fund to which, in part in the hands of said defendants, they look for the satisfaction of demands being one in which they are alike interested, because, as they believe and so aver, they have no adequate remedy in a court of law, they have invoked the aid of a court of equity in order that full and complete justice might be done between the parties to this suit.

Further, complainants, amending their original bill in accordance with the permission of the court, aver that the said suit in said original bill mentioned, instituted by said defendants against the said Helena Bridge Company upon divers alleged prom-
53 issory notes and seeking and foreclosing a certain alleged mortgage given, as alleged, to secure the payment of said notes, *was* instituted and prosecuted by the plaintiffs therein upon the said notes and mortgage, was instituted and prosecuted, as in said original bill set forth, with the fraudulent intent and purpose, then and there entertained by the said Z. King and James A. King and actuating them in the premises, to obtain possession of the said bridge and its appurtenances, being the only property of value belonging to said Helena Bridge Company and the only revenue-producing property thereof, to render the stock of said Helena Bridge Company worthless in the hands of the holders and thereby to render the perform-

ances of their contracts to deliver stock to these complainants in the said bridge company unavailing and ineffectual if literally executed; and complainants here charge that it was the understanding and agreement of the parties to said contracts between said Z. King and Son and these complainants for the delivery of said stock, as set forth in complainants' original bill, *was* that the stock should be good and valuable stock, worth fully dollar for dollar in the public market, and that by the inst-ution and prosecution of their said suit against said Helena Bridge Company and by their taking possession of the said bridge and appurtenances the said Z. King and Son have rendered the stock of said Helena Bridge Company utterly valueless.

And complainants aver that if in pretended execution of the said contracts to deliver stock the said Z. King and James A. King were to deliver to these complainants stock in said Helena Bridge
54 Company to the just amount of their obligation such delivery, though at law it might be a literal compliance with their said legal obligation, would in equity be nugatory and ineffectual, the said stock having by the act of said Z. King and James A. King become valueless and said delivery not being in accordance with the spirit and intent of the said contract and the understanding of the parties thereto, which contemplated, as hereinbefore aver-ed, the delivery of stock worth its own face value in the public markets.

And complainants charge that in procuring the said promis-ory notes to be executed and transferred to them and the said mortgage securing the payment of the same to be executed by the said Helena Bridge Company and that in instituting said proceedings and prosecuting to judgment and decree the said suit upon said notes and mortgage the said Z. King and the said James A. King were acting in pursuance of a fraudulent design and conspiracy to render the said stock of said Helena Bridge Company valueless in the hands of its holders and the performance of their obligations to these complainants of no cost to themselves and of no value to these complainants, the said Z. King and James A. King well knowing that at that time and long before that the monies advanced, valuable labor and material supplied and conveyed under said contracts were supplied and advanced and conveyed upon the faith of said understanding and agreement that valuable stock of said company and not worthless paper were to be furnished and delivered to these complainants in lieu of their advances made to said Z. King and James A. King, as set forth in complainants' original bill; and com-
55 plainants pray for all special relief praved for in their original bill and for all general relief to which they may be entitled in equity; and they will ever pray, &c.

DIGGES & AUBREY,
Solicitors for Complainants.

UNITED STATES OF AMERICA:

Personally appeared before me, the undersigned authority, H. H. McLane, to me well known, one of the complainants in the above-styled suit, who, being by me duly sworn, deposes and says that the facts stated in the above and foregoing amended bill are true so far

as stated upon the knowledge of said affiant, and that so far as the same are alleged upon information said affiant believes them to be true.

H. H. McLANE.

Sworn to and subscribed before me this *5th day* January 5, 1884.
W. C. ROBARDS.
U. S. Commissioner.

Endorsed: No. 19. H. H. McLane *et al. vs.* Z. King & Son *et al.* Complainants' amended bill. Filed Jan'y 5th, 1884. W. C. Robards, cl'k.

56 *Demurrer of Defendants to the Bill of Complainants as Amended. Filed Feb'y 2d,* 1884.

Demurrer of defendants to the bill of complainants as amended.

In the Circuit Court of the United States for the Western District of Texas, at San Antonio.

HIRAM H. MCLANE and THOMAS RUCKMAN, Compl'ts, *vs.* Z. KING and JAMES A. KING and THE HELENA BRIDGE COMPANY, Defendants.	In Chancery.

The demurrer of Z. King and James A. King to the bill of complaint of Hiram H. McLane and Thomas Ruckman, the above-named complainants.

These defendants, by protestation, not confessing all or any of the matters and things in the complainants' bill of complaint contained to be true in such manner and form as the same *is* therein set forth and alleged, d*oth* demur to said bill, and for cause of demurrer show*eth:*

First. That the said complainants in and by their said bill as amended have not made or stated such a case as entitles them in a court of equity to any discovery as against these defendants or any relief against them as to the matters contained in the said bill or any such matters.

Second. It appears by the said bill as amended that the same is not entitled or addressed as required by the practice and rules of this court, and that there is no prayer for subpœna in said bill.

Third. It appears by the said bill as amended that the said complainants have taken advantage of the general leave to amend given to the complainants by the court upon sustaining the demurrer of these defendants to the original bill, without authority of law
57 and contrary to the practice of this court, to introduce in their said bill as amended a new and distinct cause of action in order to sustain the jurisdiction of this court in their behalf; which cause of action, it appears by the said bill as amended, was well

known to the said complainants at the time of filing their original bill in this cause.

Fourth. It appears by the said bill as amended that the same is exhibited by the complainants against the defendants in this suit upon seperate and distinct contracts relating to seperate and distinct matters, having no connection with each other; that the said Hiram H. McLane brings his said bill as amended against these defendants upon a seperate and distinct contract entered into between the said McLane and the defendants Z. King and James A. King, dated March 2d, 1876, and the said Thomas Ruckman and Hiram H. McLane jointly in the same action bring their said bill as amended against the said defendants upon a seperate contract made between the said Thomas Ruckman and the defendants Z. King and James A. King, dated March 6th, 1876; which said contract was not the subject of agreement in fact so as to authorize an action by the said McLane and Thomas Ruckman jointly, and which said contracts between the said McLane and the defendants Z. King and James A. King and between Thomas Ruckman and the said Z. King and James A. King, as well as the parties thereto as alleged in said amended bill, are distinct and seperate and cannot be heard in the same bill.

Fifth. The said bill as amended seeks to attack the force and validity of the judgment under which it is alleged the defendants Z. King and James A. King acquired title to the property of the Helena Bridge Company and the proceedings thereunder;
58 and the said bill as amended seeks to introduce a verbal understanding as to the value of the stock to be acquired by the complainants under their written agreement aforesaid with Z. King and James A. King, the defendants, without alleging any acts of fraud of said defendants in the procuring of said judgment or the title to the property of the Helena Bridge Company thereunder and without alleging any acts of fraud of said defendants in procuring the said agreements.

Sixth. The said complainants, by their said bill, have joined with these defendants The Helena Bridge Company as a defendant thereto and do not show by their bill any interest the said bridge company has in this suit or ask any relief against the same.

Seventh. The said complainants in said bill, if they have any right to relief against these defendants in respect to the matters alleged or stated therein, the said relief is in the nature of damages and the matters stated therein can be fully heard and determined by a court of law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendants do demur thereto and humbly demand of this court whether they shall be compelled to make any further or other answer to the said bill, and pray hence to be dismissed with their costs and charges in this behalf most wrongfully sustained.

Z. KIND.
JAS. A. KING.

JNO. A. & N. O. GREEN,
Solicitors for Defendants, San Antonio, Texas.

We certify that in our opinion this demurrer to the bill of complaint of Hiram H. McLane and Thomas Ruckman is well founded in point of law.

JNO. A. & N. O. GREEN,
Solicitors for Def'ts Z. King & James A. King.

59 THE UNITED STATES OF AMERICA:

THE STATE OF OHIO, }
County of Cuyahoga. }

Before me, the undersigned, Charles H. Bill, United States commissioner, northern district of Ohio, personally came Zenas King and James A. King, defendant- to the bill of complaint of Hiram H. McLane and Thomas Ruckman against Z. King and James A. King and the Helena Bridge Company above named, and, being duly sworn, on oath state that this demurrer to said bill is not interposed for delay.

CHARLES H. BILL,
U. S. Commissioner, N. D. O.

UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

I, A. J. Ricks, clerk of the circuit court of the United States for the northern district of Ohio, sixth circuit, do hereby certify that I am well acquainted with the handwriting of Charles H. Bill, whose name is subscribed to the annexed affidavit, and that the signature to the same is in his proper handwriting; and I do further certify that he was at the time of signing the same a commissioner of the circuit court of the United States of America for the northern district of Ohio.

In testimony whereof I hereto subscribe my name and affix the seal of the said circuit court, at Cleveland, Ohio, this 24th day of January, in the year of our Lord one thousand eight hundred and eighty-four, of the Independence of the United States the 108th.

[L. S.] A. J. RICKS, *Clerk,*
By O. C. BEATTY,
Deputy Clerk.

60 Endorsed: No. 19. Ch'y. U. S. c't c't. H. H. McLane and Thomas Ruckman *vs.* Z. King & James A. King & The Helena Bridge Company. Demurrer of defendants to the bill of complainants as amended. Filed Feb'y 2d, 1884. W. C. Robards, cl'k. Jno. A. & N. O. Green, solicitors for def'ts Z. King and James A. King.

Complainants' Amended Bill. Filed May 5th, 1884.

Complainants' amended bill.

Circuit Court United States, at San Antonio, Texas.

HIRAM H. McLANE *et al.*
vs.
Z. KING *et als.*
} No. 19. In Chancery.

To the honorable the judges in and for said circuit court:

The amend- bill of said complainants shows to your honors that, in accordance to the ruling of the judge heretofore in said cause made, complainants dismiss and discontinue the said cause in so far as the same has been prosecuted or is founded upon a several cause of action arising in favor of said complainant, H. H. McLane, as seperated and distinguished from his said co-complainant, Thomas Ruckman, hereafter and hereby prosecuting said cause upon the joint cause of action apparent from the allegations of plaintiffs' original petition, filed September 12, 1882, and their amendment, filed Jan., 1884, in favor of and owned and
61 enjoyed jointly by complainants, hereby reiterating and re-affirming all and singular the *the* allegations of said original petition, complainants' original bill, filed June 4th, 1883, and their amended bill, filed January, 1884, in so far as they relate or are pertinent to the said joint cause of action of said complainants against said defendants.

And complainants pray for all relief prayed for heretofore in said cause so far as the same may be appropriate to their said joint demand and cause of action, and they pray for all general and special relief to which they may be entitled in equity.

WM. AUBREY,
Solicitor for Complainants.

UNITED STATES OF AMERICA, }
Western District of Texas. }

Personally appeared this day before me, the undersigned authority, H. H. McLane, to me well known and one of the complainants in the above-entitled cause, who, being by me duly sworn, deposes and says that the facts stated in the above and foregoing annexed bill are true so far as stated upon the knowledge of said affiant, and that so far as same are alleged upon information said affiant believes — to be true.

H. H. McLANE.

Sworn to and subscribed before this 5th day of May, 1884.

W. C. ROBARDS,
U. S. Commissioner.

Endorsed: No. 19. H. H. McLane *et als. vs.* Z. King & Son. Claimants' amended bill. Filed May 5, 1884. W. C. Robards, cl'k.

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62 *Demurrer of Def'ts to the Bill of Complainants. Filed June 16th, 1884.*

Demurrer of defendants, Z. King and James A. King, to the bill of complainants as amended.

In the U. S. Circuit Court for the Western District of Texas, at San Antonio.

HIRAM H. MCLANE and THOMAS RUCKMAN, Compl'ts,
vs.
Z. KING and JAMES A. KING & THE HELENA BRIDGE COMPANY, Def'ts.
No. 19. In Chancery.

The demurrer of Z. King and James A. King to the bill of complaint of Hiram H. McLane and Thomas Ruckman and as amended by their respective amendments filed in this cause Jan'y 19th, 1884, and May 5th, 1884.

These defendants, by protestation, not confessing all or any of the matters and things in the complainants' said bill as amended contained to be true in such manner and form as the same *is* therein set forth and alleged, d*oth* demur to the said bill, and for cause of demurrer shew*eth:*

First. That the said complainants in and by their said bill have not made or stated such a case as entitles them in a court of equity to any discovery as against these defendants or to any relief against them as to the matters in the said bill or any such matters.

Second. It appears by the said bill as amended that the said complainants have taken advantage of the general order for leave to amend their original bill upon the court sustaining the demurrer of these defendants thereto, without the authority of law and contrary to the practice of this court, to introduce into their said

63 bill as amended a new and distinct cause of action with reference to the joint interest of the complainant Hiram H. McLane with the complainant Thomas Ruckman in the account and claim of the said Thomas Ruckman against these defendants set out in complainants' original bill in order to sustain the jurisdiction of this court in behalf of said complainants, which cause of action, it appears by the said complainants' bill as amended, was well known to them at the time of the filing of their original bill, and no reason or excuse is alleged by them why the matter aforesaid was not sought to be earlier introduced in said bill.

Third. The said bill as amended, as shown upon its face, seeks to attack the force and validity of the judgment of this court and the proceedings thereunder, by virtue of which these defendants, Z. King and James A. King, acquired title to the property of the Helena Bridge Company, without alleging any fraud in the procurement of said judgment or otherwise shewing that they are entitled to reverse or revise the same.

Fourth. The said bill as amended seeks to introduce into the written contract between these defendants and the defendant Thomas Ruckman a verbal understanding as to the value of the stock to be acquired by said Thomas Ruckman under such written contract without alleging any acts of fraud or mistake in respect to the procurement of said contract or any reason why the terms thereof should be barred from that which is therein expressed.

Fifth. The complainants show no ground in said bill to attack the validity of the title acquired by these defendants under the decree and proceedings of this court to the property of the Helena Bridge Company, and they fail to show any equitable interest in the said property under the purchase of the same by these defendants by virtue of said proceedings.

64 Sixth. It appears by the said bill that the matter embraced therein accrued solely between these defendants and the complainant Thomas Ruckman, and that the same is not the subject of agreement so as to authorize the joinder with him of the complainant Hiram H. McLane.

Seventh. It appears by the said bill that the same is brought against the Helena Bridge Company jointly with these defendants, and that the complainants do not show by their said bill any interest in the matter in controversy owned or possessed by the said Helena Bridge Company or ask any relief against the same, for which cause there is a misjoinder of parties defendant.

Eighth. The said complainants in said bill if they have any relief against these defendants in respect to the matters alleged or stated therein the said relief is in the nature of damages and the matters stated therein can be fully heard and determined by a court of law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the said defendants do demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray hence to be dismissed with their costs and charges in this behalf most wrongfully sustained.

JNO. A. & N. O. GREEN,
Solicitors for Defendants, San Antonio, Texas.

We certify that in our opinion this demurrer to the bill of complainants, Hiram H. McLane and Thomas Ruckman, is well founded in point of law.

JNO. A. & N. O. GREEN,
Solicitors for Defendants Z. King and James A. King.

65 UNITED STATES OF AMERICA, }
State of Ohio, County of Cuyahoga. }

Before me, the undersigned, Earl Bill, clerk of the district court of the United States for the northern district of Ohio, personally came Zenas King and James A. King, defendants to the bill of complaint of Hiram H. McLane and Thomas Ruckman against Z. King, James A. King, and the Helena Bridge Company above named, and,

being duly sworn, on oath state that this demurrer to said bill is not interposed for delay.

Z. KING.
JAMES A. KING.

Subscribed and sworn to before me by the said Zenas King and James A. King this 24th day of May, A. D. 1884.

EARL BILL,
Clerk U. S. District Court, N. D. O., and U. S. Commissioner.

UNITED STATES OF AMERICA, }
Northern District of Ohio. }

I, Martin Welker, district judge of the United States for the northern district of Ohio and one of the judges of the circuit court of the United States for said district, do hereby certify that Earl Bill, whose name is subscribed to the foregoing attestation, was at the time of signing the same clerk of said district court of the United States and a commissioner of said court, and that the said attestation is in due form of law.

Winess my hand, at Cleveland, this 3d day of June, A. D. 1884.

M. WELKER,
District Judge.

66 Endorsed: No. 19. U. S. circuit court. In chancery. San Antonio, Texas. H. H. McLane and Thomas Ruckman, comp'ts, *vs.* Z. King & James A. King & The Helena Bridge Company. Demurrer of defendants, Z. King and James A. King, to the bill of complainants as amended. Filed June 16th, 1884. W. C. Robards, clerk, by D. West, deputy. Jno. A. & N. O. Green, sol's for def'ts, Z. King and James A. King.

Opinion of the Court.

H. H. MCLANE and THOMAS RUCKMAN
vs.
Z. KING & SON. } No. 19. In Equity.

This suit was commenced in the district court of Karnes county on the 12th day of September, 1882, and complainants sought in that court to have a decree in their favor vesting title in them to the land at either approach to the bridge (known as the Helena bridge) as well as to the bridge itself, or in case no such judgment could be rendered, then for a judgment against defendants for a sum of money, &c.

The cause was transferred to this court and is upon the equity docket, No. 19.

67 The bill with its amendments, taken in connection with the exhibits referred to, establish, as I understand them, about the following facts:

Anterior to the several contracts referred to there existed a corporation in this State styled the Helena Bridge Co.

The purpose and object of the creation of this corporation was to cause to be erected a bridge across the San Antonio river at the town of Helena.

Z. King and Son were and are, I believe, iron-bridge builders.

The Helena Bridge Company contracted with Z. King and Son to construct the bridge, and the company agreed with Z. King and Son to pay certain amounts in money and to further compensate them in the stock of the Helena Bridge Company.

The Helena Bridge Company executed certain notes secured by mortgage upon the bridge to be used in order to secure the building of the bridge. These notes and mortgage were transferred to Z. King & Son as part pay for the building of the bridge. The bridge was built and accepted by the Helena Bridge Company, but Z. King and Son had not been paid, and that on the 24th day of July, 1880, Z. King and Son filed their suit in this court, upon the law side, to recover the amount due upon the notes referred to and to foreclose the mortgage which secured the payment thereof. The mortgage was upon the bridge, fixtures, &c. At the October term, 1881, judgment was rendered upon the notes with foreclosure.

The bridge was sold to pay the debt and was bid in by the said Z. King and Son.

68 In order to aid in the construction of the bridge and to secure help and material and right of way, Z. King and Son contracted with certain persons therefor, and agreed to pay therefor in the stock of the Helena Bridge Company.

The complainant Ruckman alleges that he furnished supplies, &c., &c., and was to be paid in the paid-up stock of the said bridge company, and there is now no Helena Bridge Company, or, if there is, it has no property.

It is worthy of remark that the Helena Bridge Company are not complaining that the work was not done in time nor that it was not well done. It will be remembered also that Thomas Ruckman, one of the complainants, is not the Ruckman who is described as the treasurer of the Helena Bridge Company, with whom the contract was made for the erection of the bridge.

If I correctly understand the allegations of the bill as it now stands, it appears that whatever interest the complainant McLane has, if any, is by a purchase from his co-complainant Ruckman and being a ? interest in the account of Ruckman for supplies for the bridge structure, &c. As to so much of the claim of complainant McLane as he purchased from his co-complainant, it is evident that there was no original equities between him and these defendants that would be sufficient to enable him to claim to be admitted into the purchase of the bridge made by the defendants, and to be declared part owner with them, and to be entitled to share in the tolls of the bridge until his debt was realised. He purchased an interest in the

69 account, and that purchase was subject to the contingency that if the bridge was sold to pay defendants for erecting the same that he could not hold, if at all, as against the prior lien created by the notes and mortgage above referred to; and as he was to be paid in the stock of the company, if the stock became valueless

the loss would fall upon him; and as it is alleged that the bridge company is insolvent and the stock worthless, the loss must fall upon him.

The defendants, it seems, were to be paid for the erection of the bridge largely in the stock of the company, besides the notes referred to, and they contracted with others to furnish means to complete the bridge and agreed to compensate them with a portion of the stock they were to receive for the building of the bridge. It seems that at the time these contracts were made people believed that the stock would be valuable, and they were willing to advance upon the faith they had in the enterprise. In this there has been disappointment.

Can it be said that because the Helena Bridge Company became insolvent and their stock valueless that these defendants shall be responsible therefor and be compelled to admit those who bargained for the stock to become joint owners with them in the bridge which they purchased at the sale made to satisfy the notes and mortgage executed by the bridge company to secure the building of the bridge?

The defendants suffer with other persons to the extent they were to be paid in stock, unless they sold said stock to persons like complainant Ruckman, who were willing to engage in the venture.

Any person who chose to do so could have bid for the
70 bridge at the sale, and because defendants saw fit to bid more than any one else for the bridge, does that raise an equity against them compelling them to let in every person to share with them in their purchase who had contracted to receive pay in the paid-up stock of the company?

The allegation in the bill that the stock was to be worth dollar for dollar is ejecting into the contract words not authorized by the contract itself.

I am, for the reasons above suggested, forced to the conclusion that to the extent that complainants contracted to furnish supplies, material, &c., to be paid in the stock of the company they are remediless, as the stock, if issued, it is admitted, would be valueless.

If this be the correct view to take of the rights of the parties, it disposes of all matters in this suit save and except the claim of H. H. McLane for the one thousand dollars and interest, which he avers he is entitled to be paid back because the bridge was not completed by a certain date and because of a failure to keep the approaches to the bridge in proper repair and condition.

The original bill claim*ing* that the one thousand dollars and interest was to be paid back in case of a breach of the agreement, and a breach was alleged.

If I am correct in my conclusions, it seems that it virtually disposes of all that is left in the bill.

It will be remembered that a demurrer was filed to the original bill for multifariousness, which was sustained. Thereupon came the amended bill of Jan'y, 1884, alleging that complainant
71 did in fact claim a $\frac{3}{4}$ interest in the claim of Thomas Ruck-

man by assignment in writing to him, and the claim is based upon the itemized account attached to the original bill.

Another demurrer was interposed and sustained, because it was sought to recover in favor of co-complainants the account with Ruckman, and complainant McLane sought, also, seperate relief as to the one thousand dollars claimed in his own individual right.

Then came the amendment of May, 1884, dismissing that portion of the bill relating to the individual claim of H. H. McLane, so that there is nothing now left for adjudication save the joint claim set up as above stated and embraced in the exhibit attached to complainants' original bill.

The demurrer now under consideration goes to the very merits of the case as it now stands. For want of equity and for the reasons above indicated, I am forced to conclude — is well taken.

As to averments of fraud in procuring the judgment, foreclosure of lien, and sale, the general allegations of fraud and conspiracy are not sufficient to entitle the same to consideration, and that judgment cannot be thus collaterally attacked.

Wherefore the demurrer is sustained and bill dismissed.

E. B. TURNER, *Judge.*

Endorsed: No. 19. H. H. McLane *et al. vs.* Z. King and Son. Opinion of the court. Filed Nov. 4, 1885. W. C. Robards, cl'k.

72 From chancery rule book of the United States circuit court for the western district of Texas, at San Antonio.

At Rule, Monday, June 4th, 1883, page 21.

Original Bill. Filed June 4th, 1883.

H. H. McLane *et al.*
vs.
Z. King & Son. } No. 19. Original Bill Filed.

On this day came H. H. McLane and Thomas Ruckman, complainants herein, by their solicitors, Messrs. Digges and Aubrey, and filed herein their bill of complaint.

Appearance of Defendants.

Appearance entered Monday July 2d, 1883, page 22.

H. H. McLane and Thomas Ruckman
vs.
Z. King and James A. King and The Helena Bridge Company. } Appearance of Defendants.

Now comes the defendants, Z. King and James A. King and The Helena Bridge Company, by their solicitors, Jno. A. and N. O. Greene, — enter their appearance herein.

At Rule, Monday, August 6th, 1883, page 23.

Demurrer to Original Bill. Filed August 6th, 1883.

Demurrer to original bill.

H. H. McLane and Thomas Ruckman
vs.
Z. King and James A. King and The Helena Bridge Company.

On this day came the defendants Z. King & Jas. A. King, by their counsellors, John A. & N. O. Greene, and file- herein their demurrer to complainants' original bill.

73 At Rule, Monday, September 3d, 1883, page 24.

Demurrer Set Down for Hearing by the Complainants.

Demurrer set for hearing by complainants.

H. H. McLane *et al.*
vs.
Z. King & James A. King *et al.*

Now comes the complainants in this cause, by their counsel, and set down the demurrer of defendants for hearing at the October, 1883, rule day.

DIGGES & AUBREY,
Solicitors for Complainants.

At Rule, Monday, Oct. 1st, 1883.

Demurrer Set Down for Hearing by the Defendants.

Demurrer set down for hearing by defendants.

H. H. McLane *et al.*
vs.
Z. King and James A. King.

In this cause come the defendants and set down for hearing the demurrer to the bill of complainants on the 8th day of October, 1883, or as soon thereafter as the same can be heard.

From Minutes of Circuit —, Monday, Oct. 23d, 1883, page 336.

Demurrer to Original Bill Sustained and Leave Granted to File Amended Bill.

H. H. McLane *et al.*
vs.
Z. King & Son.

Upon consideration by the court, the demurrer heretofore made in this cause by complainants is sustained upon the ground of multifariousness. It is ordered that complainants recover *his* costs

in this cause and have until rule day or rule day thereafter to amend bill.

At Rule, Monday, January 7, 1884, page 29.

Complainants' Amended Bill. Filed Jan'y 7th, 1884.

H. H. McLane *et al.*
vs.
Z. King and Son *et al.*

On this day come H. H. McLane *et al.*, complainants in above-styled cause, by their solicitors, Mess. Digges and Aubrey, and file herein their amended bill.

74 At Rule, Monday, Feb'y 4th, 1884, page 29.

Demur-er to Bill as Amended. Filed Feb'y 4th, 1884.

Demurrer to bill as amended.

H. H. McLane and Thomas Ruckman
against
Z. King & James A. King & The Helena Bridge Company. } No. 19.

In this case now come the defendants Z. King and James A. King and file their demurrer to the complainants' bill as amended.

At Rule, Monday, March 3d, 1884, page 30.

Demurrer Set for Hearing, March Term, 1884.

H. H. McLane *et al.*
vs.
Z. King *et al.*

On this day came Wm. Aubrey, solicitor for complainants, — set down for hearing the demurrer of defendants to complainants' bill as amended, at the convenience of the court, during the March term, A. D. 1884.

Attest: W. C. ROBARDS, *Cl'k.*

At Rule, Monday, May 5th, 1884, page 34.

Amended Bill. Filed May 5th, 1884.

Amended bill filed.

H. H. McLane *et al.*
vs.
Z. King & Son.

On this day came the complainants, by their solicitor, William Aubrey, and filed herein their amended bill.

June 16th, 1884, page 41.

Demurrer to Amended Bill. File- June 16th, 1884.

HIRAM H. McLANE and THOMAS RUCKMAN
vs.
Z. KING and JAMES A. KING and THE HELENA BRIDGE COMPANY. } No. 19. In Chancery.

In this case now come the defendants Z. King and James A. King and file their demurrer to the complainants' bill as amended.

JNO. A. & N. O. GREENE,
Solicitors for Defendants.

75 At Rule, Monday, July 7th, 1884.

Demurrer of Def'ts Set for Hearing Aug. 4th, 1884.

H. H. McLANE *et al.*
vs.
Z. KING AND SON. } No. 19. Demurrer Set Down for Hearing at the August Rule Day, 1884.

This day came William Aubrey, solicitor for complainants in said suit, and sets down the demurrer of Z. King and Son to defendants' bill for argument at the August rule day, August 4, 1884, *for argument.*

76 *Final Decree.*

H. H. McLANE and THOMAS RUCKMAN
vs.
Z. KING and JAMES A. KING and THE HELENA BRIDGE COMPANY. } In Chancery.

This cause coming on to be heard on this the 4th day of November, 1885, upon the demurrer of the defendants Z. King and James A. King to the bill of the complainants, and it appearing that the said demurrer is sufficient, it is ordered and adjudged that the same do stand and be allowed, and that said bill be dismissed at the costs of the complainants, to be taxed, for which execution may issue.

E. B. TURNER, *Judge.*

77 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Western District of Texas, at San Antonio.

I, W. C. Robards, clerk of the circuit court of the United States for the western district of Texas, at San Antonio, do hereby certify that the foregoing seventy-seven pages of writing contain a true and correct transcript of all the proceedings had in said court at its November term, A. D. 1885, in the case of Hiram H. McLane and Thomas Ruckman, complainants, against Z. King and James A.

King and The Helena Bridge Company, defendants, said cause being No. 19 on the docket of said court.

In witness whereof I hereto sign my name and affix the seal of the circuit court of the United States, at San Antonio, this 14th day of September, A. D. 1888.

{ The Seal of the U. S. Circuit Court, Western Dist. Texas, San Antonio. }

W. C. ROBARDS,
Clerk U. S. Circuit Court, Western District Texas.

Endorsed on cover: Case No. 13,297. W. Texas C. C. U. S. No. 235. Hiram H. McLane and Thomas Ruckman, appellants, *vs.* Z. King and James A. King, composing the firm of Z. King & Son, and The Helena Bridge Company. Filed October 13, 1888.

Office Supreme Court U. S.
FILED.
MAR 11 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No., 235.

HIRAM H. McLANE AND THOMAS RUCKMAN,
APPELLANTS,

vs.

Z. KING AND JAMES A. KING, AND THE HELENA BRIDGE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

Brief for Appellants.

M. F. MORRIS,
Of Counsel for the Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No., 235.

HIRAM H. McLANE AND THOMAS RUCKMAN,
APPELLANTS,

vs.

Z. KING AND JAMES A. KING, AND THE HELENA BRIDGE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

Brief for Appellants.

I.

STATEMENT OF CASE.

This suit, which was commenced in one of the State courts of the State of Texas and subsequently removed upon petition to the circuit court of the United States for the western district of that State, seeks specific enforcement of a certain contract to have the complainants, who are also the appellants, decreed to be entitled to a joint interest with the defendants in a certain bridge structure and appurtenant

real estate, and for an accounting between complainants and defendants in regard to the revenues derived from said bridge; and, in the alternative, the bill seeks payment of a certain specific sum of money.

The decision of the circuit court was rendered upon demurrer to the bill of complaint; and the facts of the case, therefore, are derived exclusively from this bill (Rec., pp. 15–18), and the exhibits annexed to it and made part of it (Rec., pp. 19, 21). These facts are in brief as follows:

A bridge was to be constructed over the San Antonio river, at Helena, Karnes county, in the State of Texas. A corporation, known as the Helena Bridge Company, was formed to construct it. This company, which was made one of the defendants to this suit, contracted with the firm of Z. King and Son, its codefendants, to do the work. Having proceeded to some extent with the performance of their agreement, King and Son, for what reason does not appear, contracted with the appellant Ruckman to take the work off their hands, and to finish the bridge; and the consideration for Ruckman's services was to be the transfer to him by King and Son of ten thousand dollars in the paid-up stock of the Helena Bridge Company, to which King and Son were to be entitled on the completion of the bridge. (Rec., pp. 21, 22.)

The appellant McLane was the owner of the land on which the bridge abutted; and part of the agreement of Ruckman with King and Son was that he should settle with McLane for this land and the right of way to the bridge, in consideration of the issue to McLane of one thousand dollars in the paid-up stock of the Helena Bridge Company, which McLane, it seems, had agreed to receive. (Rec., p. 22.)

A few days before this agreement was made between Ruckman and the firm of King and Son, McLane had contracted with that firm to give to the Helena Bridge Company the land necessary for the abutment of the bridge and

the right of way, and had paid one thousand dollars in cash to the firm as a subscription to the enterprise; and had agreed, as a consideration for his cession and subscription, to receive from King and Son, upon the completion of the enterprise, two thousand dollars in the paid-up stock of the Bridge Company. And it was also stipulated between them, that, if the bridge was not completed by King and Son by the first day of the ensuing May, King and Son should refund the subscription of one thousand dollars, and the land granted should revert to McLane, and the privilege should be at an end (Rec., pp. 19, 20). It was also provided in the agreement that the grant should become void and the land should revert to McLane, if the bridge should not be kept in good order for twenty years (Rec., p. 20).

Ruckman, at a cost to himself of $6,458.98, performed his agreement with King and Son; *paid all the expense of erecting the bridge*, as required by his contract (Rec., pp. 22–25), and delivered the bridge to the Kings or the company; but he never received one cent of compensation for his work; the stipulated stock was never transferred to him, and no attempt whatever was made by King and Son to compensate him for his labor, or to perform their part of the agreement, notwithstanding that they themselves received, as the sequel will show, all the benefit of his labor and service (Rec., pp. 16, 17).

McLane also fully performed his agreement, paid his subscription, and ceded his land; and King and Son treated him as they treated Ruckman. They gave him no stock; and, although they retained his land and his money, they never sought to compensate him in any manner whatever (Rec., pp. 16, 17).

Not only that; but in order to defeat effectively the just demands of McLane and Ruckman, King and Son procured a judgment against the Helena Bridge Company, which in the mean time, it seems, had become insolvent, upon certain mortgage notes alleged to have been given by the com-

pany; and to satisfy the judgment and enforce the mortgage, fraudulently caused the bridge, which was the only property the company had, to be sold, and purchased it themselves for the ridiculously inadequate sum of two thousand dollars, when the property was probably worth at least ten times that sum (Rec., pp. 17, 28, 29).

The bill of complaint sets up these facts, and charges that King and Son should not be permitted by their fraudulent act, purposely intended to defeat the rights of the complainants, to retain possession of the property thus fraudulently acquired by them, without accountability to the complainants.

The printed record in this case from page 1 to page 15 is taken up with the proceedings in the State court. These proceedings have entirely passed out of the case, having been superseded by a new original bill filed in the circuit court upon the removal of the case to that court (Rec., p. 15). In this original bill the two causes of action above stated were joined; that is, McLane's claim under his own contract, and Ruckman's claim under his contract to build the bridge; and upon the interposition of a demurrer by the defendants, the bill was held multifarious (Rec., p. 40). Thereupon the complainants amended by waiving the separate and independent claim of McLane, and claimed relief merely on the claim of Ruckman for the construction of the bridge, of which, it seems, three-fourths interest had, on January 19, 1882, before the institution of these proceedings, been assigned by Ruckman to McLane. (Rec., pp. 27, 33.)

So the case now stands simply as a bill in equity filed by McLane and Ruckman as joint owners of the rights of Ruckman in the contract entered into by Ruckman with King and Son to construct the bridge in question, as already stated (Rec., pp. 21, 22). To the claim so stated another demurrer was interposed, and the court sustained the demurrer and held that the complainants had no ground for

equitable relief. From this decision the present appeal has been taken.

II.

ASSIGNMENTS OF ERROR.

1. The circuit court erred in holding that there was no equity in the bill of complaint.

2. The circuit court erred in sustaining the demurrer of the defendants on this alleged ground of want of equity in the bill.

3. The circuit court erred in holding that the complainants should not be admitted into a joint interest with the defendants in the bridge.

4. The circuit court erred in holding that the charge of fraud against the defendants could not be inquired into as being insufficient.

5. The circuit court erred in holding that the bill of complaint was a collateral attack upon a regular proceeding of foreclosure, and that such proceeding could not thus be collaterally attacked.

6. The circuit court erred in dismissing the bill of complaint.

III.

BRIEF OF ARGUMENT.

1.

It was charged in the bill of complaint in this case that the defendants, the appellees here, for the purpose of avoid-

ing the performance of their obligations to the complainants, had fraudulently procured from the Bridge Company, which they seem to have entirely controlled, certain promissory notes and a mortgage to secure them, upon which subsequently and in pursuance of the same fraudulent design they had instituted proceedings for foreclosure, procured a decree, caused the sale of the property, purchased it for themselves at a nominal price, and practically destroyed the Bridge Company and rendered its stock worthless. All this was charged to have been done in pursuance of a scheme of fraud conceived by these appellees to evade the just demands of the appellants upon the contracts that had been made between them (Rec., p. 29). The circuit court held that this charge was too general, and that the decree of foreclosure could not be attacked in this collateral way.

It is respectfully submitted that the court below was wrong in this conclusion. Assuredly, the decree of a court may be attacked for fraud of the parties in procuring it, as well as any other transaction. And assuredly there is no rule of law and no reason why persons who are not parties to a legal proceeding may not attack it for fraud if it seeks to affect or does in fact affect their just rights. It is only collaterally that they can attack such a proceeding. Not being parties to it, they have, in general, no right to intervene in it for any purpose. It is only when it is sought to be enforced to their detriment, or when they find it to be an obstacle in the way of their enforcement of their own rights, that they are entitled to attack it, and this attack must necessarily be collateral.

Sessions *vs.* Johnson, 95 U. S., 347.
Humes *vs.* Scruggs, 94 U. S., 22.
Johnson *vs.* Waters, 111 U. S., 640.
Michaels *vs.* Post, 21 Wallace, 398.

When a judgment or decree is obtained by fraud, even parties to the proceeding may attack it whenever it is inter-

posed against them; but there can be no question that, when the fraud is directed against third persons, as in this case, such third persons may show the fraud even in a collateral proceeding.

Michaels *vs.* Post, 21 Wallace, 398.

Is the fraud sufficiently alleged here? It is not apparent how it could have been more specifically alleged. A contract is stated, and made an exhibit in the case, which provided for the performance of certain work by the appellants, which work they did actually and faithfully perform, and which was to be paid for in the stock of a certain company. And then the allegation is specifically made that, for the purpose of avoiding their obligation under this contract, the appellees, King and Son, purposely wrecked and destroyed the company, made its stock valueless, sold out the assets of the company, and purchased these assets for themselves at a merely nominal price—all under the fraudulent guise of regular legal proceedings. Assuredly this is a sufficiently equitable cause for the intervention of the equity jurisdiction of the court.

Shelton *vs.* Tiffin, 6 Howard, 153.
Atkins *vs.* Dick, 14 Peters, 114.

2.

Even if there were no actual fraud charged in the bill of complaint against the appellees, the facts of the case constitute of themselves a constructive fraud against the appellants.

The appellants had agreed to do certain work for the appellees. That work was done and well done, and was accepted by the appellees; and the appellees, instead of paying for it, not only never paid one single cent for it, but actually made it impossible by their own act to pay for it, by destroying the company whose stock the appellants had contracted

to receive in payment. And all this was done apparently without giving the appellants any opportunity whatever to protect their interests. And the appellants now have for $2,000 the property created by the appellees at the cost of nearly $6,500, which they guaranteed to reimburse to the appellants and which they absolutely refuse to reimburse. It is not easy to conceive a more plain and palpable case of fraud than this.

The circuit court in its opinion implies that, because all the parties believed the stock of the Bridge Company would be valuable, therefore the appellants proceeded at their own risk. Assuredly it does not follow that, because the appellants believed that the stock of the company would be valuable, therefore the appellees might proceed to destroy it with impunity. The true interpretation of the contract is, that the appellees guaranteed that the stock should be valuable; or at least that they would do nothing to impair its value. They covenanted to give value for value; they have not done it. They covenanted to give the appellants an interest in the assets of the bridge company, for this is all that stock means; and they have not done it. On the contrary, they have endeavored to prevent its being done; and the purpose of the bill is simply to compel them to do it. The bridge is all the assets which the company had; an interest in the bridge is the only equitable relief to which the appellants can have recourse. They cannot sue at law upon the contract for any useful purpose; and if they are entitled to any relief at all in equity, it is to that for which they have prayed. That they are entitled to some relief would seem to be too plain for argument, for they have performed their contract and they have not received the stipulated compensation or anything whatever in the way of compensation. And this failure is not due in any manner whatever to themselves, but solely and exclusively to the fraudulent action, intentional or unintentional it matters not, of the appellees.

3.

No harm can come from putting the appellees on proof of the rectitude of their conduct in this case. It certainly requires proof to show that this conduct was in accordance with the principles of equity and good conscience. It may be that they can bring this proof. But if they cannot do so, the facts of this case, as they are now conceded on this record, imply a condition of things which a court of equity should not fail to redress, if that redress is possible.

It is respectfully submitted, therefore, that the decree of the circuit court should be reversed and the cause remanded, with directions to that court to overrule the demurrer and require the defendants to answer.

M. F. Morris,
Of Counsel for the Appellants.

Office Supreme Court U. S.
FILED.
MAR 14 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No., 235.

HIRAM H. McLANE AND THOMAS RUCKMAN,
APPELLANTS,

vs.

Z. KING AND JAMES A. KING, COMPOSING THE FIRM OF Z. KING & SON; THE HELENA BRIDGE COMPANY, AND JOHN RUCKMAN.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

A. G. RIDDLE,
H. E. DAVIS,
For Z. King & Son.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No., 235.

HIRAM H. McLANE AND THOMAS RUCKMAN,
APPELLANTS,

vs.

Z. KING AND JAMES A. KING, COMPOSING THE FIRM OF Z. KING & SON; THE HELENA BRIDGE COMPANY, AND JOHN RUCKMAN.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

The case on the record.

Suit was commenced by petition in the district court of the county of Karnes, Texas, September 12, 1882, setting up that the plaintiffs own lands on both sides of the San Antonio river; that in 1875 Z. King & Co. contracted with the Helena Bridge Company, a body corporate, to construct an iron bridge across said river, to rest upon and have its

approaches over their said lands, to be completed at a named time, and to keep the same in repair for twenty years.

They failed as to time, and have not kept it in repair. That by reason thereof the land for approaches and support, with said bridge, have reverted to the plaintiffs.

That said Ruckman in effect built said bridge, for which King & Co. were to transfer to him $10,000 of the paid-up stock of said company.

That a part of all the right of said Ruckman has been transferred to said McLane.

That said Ruckman was in possession of said bridge, and was not lawfully deprived of it, and is entitled to the possession of the same.

That said Ruckman paid $2,000 to the capital stock of said company and invested $8,000 in its construction. The said McLane subscribed $1,000; and these were the conditions on which the Kings were to build and maintain said bridge. They were also to have $2,000 of said company's paid-up stock issued to said McLane; which said agreements have not been complied with by the defendants.

Prayer: That the plaintiffs be decreed to be the owners of said approaches and bridge and have the possession of the same, and also that the defendants transfer said stock to them. (Record, pp. 4, 5, and 6.)

Z. and J. A. King demurred to the above, and by way of plea set forth that the plaintiffs have no interest in the bridge, which is owned by the Kings, who purchased it at marshal's sale by order of said circuit court issued on a decree made by said court October 12, 1881, in the suit of King & Son *vs.* The Helena Bridge Company, in favor of these defendants (see record of that case in this Court, p. 30), which said sale was affirmed and the marshal executed his deed to them for the same June 7, 1882.

The said Thomas Ruckman, then the president of said company, and the said H. H. McLane, also then a director therein, were each made parties to said suit and served with

process, and allege that the matters involved in this suit were in issue in that and are *res judicata*. They deny all the allegations of the petition (pp. 9 and 10). Case removed into the circuit court on motion of the Kings (p. 11).

Demurrer sustained, and the plaintiffs amend and in effect file a new petition, which sets out a contract with McLane (who answered for the company in the above case) to the effect that he advanced $1,000 for stock and granted a right of way valued at $1,000, and if the Kings failed to complete the bridge as stipulated they were to forfeit the right of way and refund the $1,000. (Said contract is found on page 19.)

Set out the contract with Thomas Ruckman (see page 21), whereby he was to furnish all the lumber, &c., and receive $10,000 of paid-up stock of the company. Said contracts are averred to be in the record of the above case, known as No. 135 of said circuit court.

Allege that the Kings did not perform in any respect.

They set up the case of Z. King & Son, No. 135, decree and sale of the bridge to them (but do not allege fraud on their part in procuring the decree and sale; that appears much later.)

Say the bridge company owns nothing but the bridge, and the plaintiffs must be let in with the Kings or lose, and they pray accordingly. (Pages 15, 16, 17, 18.)

The defendants Kings renew their demurrer:

1st. No case made.

2d. Said contracts set up are distinct and separate; no community of interest in the plaintiffs.

3d. Said bridge company has no interest and no relief is prayed against it.

4th. The plaintiffs, if they have causes of action, have remedies at law. (Page 26.)

Demurrer sustained.

The plaintiffs amend and say that on the 19th day of January, 1882, Ruckman sold and transferred to McLane three-fourths of his interest in the bridge and premises and franchises held under his said contract with the Kings, and they have been and are since said date joint owners, and to avoid *multiplicity of suits*, &c., and they have no remedy at law, &c.

That said original case (No. 135, above) was instituted and prosecuted by the Kings with the fraudulent intent to obtain all the productive property of said bridge company and render its stock worthless, whereas it was the understanding and agreement that said stock when delivered to the plaintiffs should be worth dollar for dollar, &c.

By procuring the notes and mortgage of said bridge company, instituting said suit, and procuring the sale of said bridge the Kings fraudulently destroyed the rights and interests of the plaintiffs under their said contracts. (Pages 27, 28, 29.)

The Kings again demur, reiterating their former objections, adding:

Third. The plaintiffs have inserted, as new, matter well known to them when the first bill was filed.

Fourth. The new bill seeks to vary the written contracts by matter in parol. (Pages 30, 31.)

Thereupon the plaintiffs withdrew the several cause of the said H. H. McLane. (Page 33.)

The Kings renew their demurrer and say:

Fifth. The plaintiffs show no ground for impeaching the title of said King & Son by said purchase.

Sixth. Notwithstanding said sale by Ruckman to McLane, the claim still remains to be asserted in Ruckman's name. (Pages 34, 35.)

The said John Ruckman, made defendant, entered a disclaimer. (Page 11.)

The bridge company was never effectively made a party. No process was issued and served on it and no appearance was entered for said company.

SO THUS THE CASE STANDS.

The court, in an elaborate opinion, sustained the demurrer and dismissed the bill. (Pages 36, 37, 38, 39; decree, page 42.)

REMARKS.

We might content ourselves with a reference to the opinion of the court above cited and submit the case. We shall attempt little more.

There was to be erected a toll bridge over the San Antonio river at Helena, and the effort, so often tried, was made to make it pay for itself in its own stock. The plaintiffs embarked, to the extent of their several claims, in this enterprise on the credit of the company's stock, taking no other security. The stock, as they aver, is without value. The company has disappeared. The iron structure remains in working condition, and the effort is now made to charge these claims upon the property itself. As no means for such a result was provided, the statement of the proposition shows its fallacy.

King & Son, well and widely known iron-bridge builders, were the constructors of the bridge. They were paid in part by notes of the company secured by a mortgage on the bridge and fixtures—in stock for the balance. They furnished the iron structure and purchased the lumber, &c., of Ruckman to over $6,000, and the right of way, &c., of McLane, who also advanced $1,000 in cash, and were to pay these parties in the stock of the company, without other security.

The notes not being paid, King & Son instituted proceed-

ings in the United States circuit court as above to enforce their debt against the bridge company, with the result that a sale was decreed, at which, being the highest bidders, they became the purchasers; said sale was confirmed and the property deeded to them. They took it free of liens and claims. They remained liable to the plaintiffs severally on the contracts of February 2 and 6, 1882. (Pages 19 and 21.)

Their case was the often-referred-to case No. 135, as fully brought before this court by this record as if the record of that case had been here pleaded with formal profert. (See especially page 9.)

a. The contracts are several and cannot be joined in the same suit at law nor in equity.

b. The withdrawal of McLane's claim (page 33) and his alleged purchase of an interest in Ruckman's claim do not make the plaintiffs jointly interested therein in such a way that they can jointly enforce it by suit. Nothing short of accepting them as such joint owners, with a promise to pay them as such by the Kings, could place them in the legal position of joint obligees. The contract otherwise can be enforced only in the name of Ruckman.

c. Said contracts can alone be enforced at law. The property was subject to attachment at law in Texas. A judgment at law in the courts of the domicil of King & Son could be enforced by a creditor's bill in Texas also.

d. Said plaintiffs, by their amended bill of January 4, 1884 (page 27), attempted to change and vary said written contracts by parol evidence, forbidden alike by the rules of law and equity.

e. The plaintiffs seek to impeach the title of King & Son to said bridge property for fraud in procuring the decree and sale in their said case No. 135, which cannot be done, as they attempt in this case.

1. They do not set out the claimed fraudulent acts, nor set forth specifically wherein the fraud consists.

2. All of the parties interested in said bridge company, including the plaintiffs, were parties to that suit, were served with process, appeared and answered, and are bound by the decree.

3. Said sale was duly advertised, was open and public, and the plaintiffs had ample opportunity to bid, and a chance to impeach it when it came up for confirmation, and are estopped from attempting to impeach it here.

f. In said suit 135 said H. H. McLane answered for himself and the bridge company. In said answer, sworn to by him, he set out at length and charged that said notes and mortgage were fraudulently executed by the combination and procurement of the said Thomas Ruckman, King & Son, and others, which was the main issue in said case (see the printed record of that case in this Court, pp. 15–19), which said issue, on full proof, was passed upon by the circuit court and found for King & Son and against these plaintiffs.

That said McLane *et al.* appealed said case into this Court (and became bondsmen therefor, p. 40), where, on argument, the judgment below was affirmed from the bench, because, as shown by the clerk's certificate, the depositions and exhibits—the promissory notes—were suppressed and withheld from said record by the procurement of the counsel below for the appellants. Motion was then submitted to vacate said judgment of this court, and for leave to supply such missing matter, which was refused. (See docket of this court of the October Term, 1886, No. 140.) The case was not reported.

It seems needless to pursue this case further.

A. G. Riddle,
H. E. Davis,
For Z. King & Son.